

EXHIBIT D

GENERAL CONDITIONS, ASSURANCES AND CERTIFICATIONS WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

The following applies to all programs and/or projects funded under the Workforce Innovation and Opportunity Act (WIOA).

1. COMPLIANCE

In performance of this agreement, PARTY TO THE PROP 39 2.0 MOU will fully comply with:

- a. The provisions of the Workforce Innovation and Opportunity Act (WIOA) of 2014 that supersedes the Workforce Investment Act (WIA) of 1998; the Office of Management and Budget (OMB) Uniform Administrative Requirements, Allowable Costs, Cost Principles, and Audit Requirements for Federal Awards, Final Rule at 2 Code of Federal Regulations (CFR), Chapter I and Chapter II, Part 200, et al (here after referred to as Uniform Guidance 2 CFR Part 200); and the Department of Labor's (DOL) exceptions at 2 CFR Chapter II, Part 2900, et al. (here after referred to as DOL Exceptions 2 CFR Part 2900); and all regulations, legislation, directives, policies, procedures and amendments issued pursuant thereto.
- b. All State legislation and regulations to the extent permitted by Federal law and all policies, directives and/or procedures, which implement the WIOA.
- c. The provisions of Public Law 107-288, Jobs for Veterans Act, as the law applies to DOL job training programs.
- d. PARTY TO THE PROP 39 2.0 MOU will ensure diligence in managing programs under this agreement, including performing appropriate monitoring of its activities and taking prompt corrective action against known violations of the WIOA. PARTY TO THE PROP 39 2.0 MOU agrees to conform to the provisions of the WIOA and the contract requirements as referenced in Uniform Guidance 2 CFR Part 200, Appendix II and DOL Exceptions 2 CFR Part 2900, Appendix II to Part 200.

This document contains the entire agreement of the parties and supersedes all negotiations, verbal or otherwise and any other agreement between the parties hereto. This agreement is not intended to and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between the County of Monterey and PARTY TO THE PROP 39 2.0 MOU. PARTY TO THE PROP 39 2.0 MOU represents and warrants it is free to enter into and fully perform this agreement.

2. CERTIFICATIONS / ASSURANCES

Except as otherwise indicated, the following certifications apply to all PARTY TO THE PROP 39 2.0 MOUS.

- a. **Corporate Registration:** PARTY TO THE PROP 39 2.0 MOU, if it is a corporation, certifies it is registered with the Secretary of State of the State of California.
- b. **American's Disabilities Act (ADA):** PARTY TO THE PROP 39 2.0 MOU agrees to comply with the American's Disabilities Act (ADA) of 1990, which, prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C.12101 et seq.)
- c. **False Claims Act:** PARTY TO THE PROP 39 2.0 MOU, by signing this agreement, agrees to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets. County of Monterey shall assure that all annual, final fiscal reports, monthly claims, invoices, and vouchers, for the purpose of PARTY TO THE PROP 39 2.0 MOU requesting payment under this agreement, must include a certification, signed by an official who is authorized to legally bind PARTY TO THE PROP 39 2.0 MOU, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise." (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."
- d. **Authority to Bind Party to the Prop 39 2.0 MOU:** PARTY TO THE PROP 39 2.0 MOU shall furnish County of Monterey in writing, a list of persons authorized to execute on behalf of PARTY TO THE PROP 39 2.0

MOU: agreements, modifications to agreements, invoices or other documents as may be required by County of Monterey. The above list should include signatures of all authorized individuals and be certified by PARTY TO THE PROP 39 2.0 MOU's governing body. In the event authority is delegated to a position (e.g., President, Vice President, Treasurer), rather than to an individual, the list of positions so authorized shall be furnished including signatures of current position holders.

- e. **Sectarian Activities:** PARTY TO THE PROP 39 2.0 MOU certifies that this agreement does not provide for the advancement or aid to any religious sect, church or creed, or sectarian purpose nor does it help to support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church, or sectarian denomination whatsoever, as specified by Article XVI, Section 5, of the Constitution, regarding separation of church and state.
- f. **National Labor Relations Board:** PARTY TO THE PROP 39 2.0 MOU (if not a public entity), by signing this agreement, does swear under penalty of perjury, that no more than one final unappealable finding of contempt of court by a Federal court has been issued against PARTY TO THE PROP 39 2.0 MOU within the immediately preceding two-year period because of PARTY TO THE PROP 39 2.0 MOU's failure to comply with an order of a Federal court, which orders PARTY TO THE PROP 39 2.0 MOU to comply with an order of the National Labor Relations Board (PCC10296).
- g. **Prior Findings:** PARTY TO THE PROP 39 2.0 MOU, by signing this agreement, does swear under penalty of perjury, that it has not failed to satisfy any major condition in a current or previous agreement with the DOL or the State of California and has not failed to satisfy conditions relating to the resolution of a final finding and determination, including repayment of debts.
- h. **Drug-Free Workplace Certification:** By signing this agreement, PARTY TO THE PROP 39 2.0 MOU hereby certifies under penalty of perjury under the laws of the State of California that PARTY TO THE PROP 39 2.0 MOU will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - (2) Establish a Drug-Free Awareness Program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The person's or organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
 - (3) Every PARTY TO THE PROP 39 2.0 MOU employee who works on this agreement will:
 - a. Receive a copy of the PARTY TO THE PROP 39 2.0 MOU's drug-free policy statement; and
 - b. Agree to abide by the terms of the PARTY TO THE PROP 39 2.0 MOU's statement as a condition of employment on the agreement.
- i. **Child Support Compliance Act:** In accordance with the Child Support Compliance Act, PARTY TO THE PROP 39 2.0 MOU recognizes and acknowledges: The importance of child and family support obligations and shall fully comply with the applicable State and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and that to the best of its knowledge PARTY TO THE PROP 39 2.0 MOU is fully complying with the earnings assignment orders of all PARTY TO THE PROP 39 2.0 MOU's employees and is providing the names of all new PARTY TO THE PROP 39 2.0 MOU's employees to the New Employee Registry maintained by the State of California Employment Development Department (EDD).
- j. **Debarment and Suspension Certification:** By signing this agreement, PARTY TO THE PROP 39 2.0 MOU hereby certifies under penalty of perjury under the laws of the State of California that PARTY TO THE PROP 39 2.0 MOU will comply with regulations implementing Executive Order 12549, Debarment and Suspension, Uniform Guidance 2 CFR Part 200, Appendix I, and that PARTY TO THE PROP 39 2.0 MOU, to the best of its knowledge and belief, certifies that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

- (2) Have not, within a three-year period preceding this agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract. Nor shall PARTY TO THE PROP 39 2.0 MOU have, within a three-year period preceding this agreement, been convicted of or had a civil judgment rendered against it for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.
 - (3) Are not presently indicted for, or otherwise criminally or civilly charged by a government entity (Federal, State or local), with commission of any of the offenses enumerated in Section 2 of this Debarment and Suspension Certification.
 - (4) Have not, within a three-year period preceding this agreement, had one or more public transactions (Federal, State or local) terminated for cause or default. Where PARTY TO THE PROP 39 2.0 MOU is unable to certify to any of the statements in this Debarment and Suspension Certification, it shall attach an explanation to this agreement.
- k. **Mandatory Disclosures:** All WIOA and Wagner-Peyser recipients of Federal awards must disclose, as required at 2 CFR 200.113, in a timely manner, in writing to the Federal awarding agency or the County of Monterey, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 (Remedies for noncompliance), including suspension or debarment.
- l. **Lobbying Certification:** By signing this agreement PARTY TO THE PROP 39 2.0 MOU hereby assures and certifies to compliance with the lobbying restrictions which are codified in the DOL regulations at Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR 2900, as follows:
- (1) No Federal appropriated funds have been paid, by or on behalf of PARTY TO THE PROP 39 2.0 MOU, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant loan, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress, in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
 - (3) PARTY TO THE PROP 39 2.0 MOU shall require that the language of the lobbying restrictions be included in the award documents for agreement transactions over \$100,000 (per OMB) at all tiers (including agreements, contracts, and subcontracts, under grants, loan, or cooperative agreements), and that all subrecipients shall certify and disclose accordingly.
 - (4) This certification is a material representation of fact upon which reliance is placed when this transaction is executed. Submission of the Lobbying Certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.
- m. **Priority Hiring Considerations:** If this agreement includes services in excess of \$200,000, PARTY TO THE PROP 39 2.0 MOU shall give priority consideration in filling vacancies in positions funded by the agreement to qualified recipients of aid under Welfare and Institutions Section Code 11200 in accordance with Public Contract Code §10353.
- n. **Sweatfree Code of Conduct:** All PARTIES TO THE PROP 39 2.0 MOUs that contract for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, or supplies furnished to the State pursuant to the contract have been laundered or produced, in whole or in part, by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. PARTY TO THE PROP

39 2.0 MOU further declares under penalty of perjury that it will adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108. PARTY TO THE PROP 39 2.0 MOU agrees to cooperate fully in providing reasonable access to PARTY TO THE PROP 39 2.0 MOU's records, documents, agents or employees, or premises if reasonably required by authorized officials of the Monterey County WDB, State of California EDD, the Department of Industrial Relations, or the Department of Justice to determine PARTY TO THE PROP 39 2.0 MOU's compliance with the requirements of the Sweatfree Code of Conduct.

- o. **Unenforceable Provision:** In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this agreement have force and effect and shall not be affected hereby.

p. **Non-discrimination Clause / Affirmative Action / Equal Employment Opportunity:**

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

- a. As a condition to the agreement of financial assistance from the DOL under WIOA, PARTY TO THE PROP 39 2.0 MOU assures that it will comply fully with the non-discrimination and equal opportunity provisions of the following laws:

- i. Section 188 of the WIOA, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA financially assisted program or activity;
 - ii. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
 - iv. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
 - v. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

- b. PARTY TO THE PROP 39 2.0 MOU also assures that it will comply with Uniform Guidance 2 CFR Part 200, DOL Exceptions 2 CFR Part 2900, and all other regulations implementing the laws listed above. This assurance applies to PARTY TO THE PROP 39 2.0 MOU's operation of the WIOA financially assisted program or activity, and to all agreements that PARTY TO THE PROP 39 2.0 MOU makes to carry out the WIOA financially assisted program or activity. PARTY TO THE PROP 39 2.0 MOU understands that the United States has the right to seek judicial enforcement of this assurance.

- c. This PARTY TO THE PROP 39 2.0 MOU shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.

- (2) PARTY TO THE PROP 39 2.0 MOU will take affirmative action to assure that no individual will be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in connection with any services or activities authorized under the WIOA in violation of any applicable nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief. All complaints alleging discrimination must be filed and processed according to the procedures in the applicable DOL nondiscrimination regulations.

- (3) PARTY TO THE PROP 39 2.0 MOU will assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000(e)–2(e), 29 CFR parts 1604, 1606, 1625. (3)

- (4) PARTY TO THE PROP 39 2.0 MOU will assure that employment testing programs will comply with 41 CFR part 60–3 and 29 CFR part 32 and 29 CFR 1627.3(b)(iv).

- (5) PARTY TO THE PROP 39 2.0 MOU agrees to conform to non-discrimination and equal opportunity requirements and procedures, including County of Monterey's grievance and complaint procedures in compliance with the WIOA, the Uniform Guidance 2 CFR Part 200, DOL Exceptions 2 CFR Part 2900, Federal regulations and State statutes, regulations and policy. (Reference WDB Policy 2005-10 – Grievance and Complaint Procedures and policy attachments; <http://www.montereycountywib.org/policies/policies/>)
- (6) PARTY TO THE PROP 39 2.0 MOU will be governed by WIOA procedures relating to complaints alleging violations of the WIOA, regulations, other agreements under the WIOA including terms and conditions of employment. Participants will be notified in writing, upon enrollment into employment or training, of the WIOA complaint procedures including notification of their right to file a complaint and instructions on how to do so. Complaint procedures include: (1) the right to file a complaint, (2) the opportunity to resolve complaints informally, (3) written notice of hearings, and (4) a final decision within sixty (60) days of the date of filing.
- (7) PARTY TO THE PROP 39 2.0 MOU will comply with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, DOL."
- (8) PARTY TO THE PROP 39 2.0 MOU shall ensure equal employment opportunity based on objective personnel policies and practices for recruitment, selection, promotion, classification, compensation, performance evaluation, and employee management relations.

q. Indemnification:

- (1) The following provision applies only if PARTY TO THE PROP 39 2.0 MOU is a governmental entity: Pursuant to the provision of Section 895.4 of the California Government Code, each party agrees to indemnify and hold the other party harmless from all liability for damage to persons or property arising out of or resulting from acts or omissions of the indemnifying party.
- (2) PARTY TO THE PROP 39 2.0 MOU shall indemnify, defend, and hold harmless the County of Monterey, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the PARTY TO THE PROP 39 2.0 MOU's performance of this agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County of Monterey. PARTY TO THE PROP 39 2.0 MOU's performance includes PARTY TO THE PROP 39 2.0 MOU's action or inaction and the action or inaction of PARTY TO THE PROP 39 2.0 MOU's officers, employees, agents and subParty to the Prop 39 2.0 MOUs.

- r. Salary and Bonus Limitations:** In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006, including funds expended pursuant to this agreement, shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to Party to the Prop 39 2.0 MOUs providing goods and services as defined in Uniform Guidance 2 CFR Part 200 and the DOL Exceptions 2 CFR Part 2900. Where States are recipients of such funds, States may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients of such funds, taking into account factors including the relative cost-of-living in the States, the compensation levels for programs involved including DOL Employment and Training Administration programs. See Training and Employment Guidance Letter #05-06 for further clarification at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262.

The incurrence of costs and receiving reimbursement for these costs under this agreement certifies that PARTY TO THE PROP 39 2.0 MOU has read the above special condition and is in compliance.

- s. Federal Funding Accountability and Transparency Act (FFATA):** As required by FFATA, recipients of Federal awards are required to report sub-award and executive compensation information. By signing this agreement PARTY TO THE PROP 39 2.0 MOU hereby assures and certifies to comply with the provisions of

FFATA, which includes requirements referenced in Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900.

- t. **Air or Water Pollution Violation:** Under State laws, PARTY TO THE PROP 39 2.0 MOU shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of Federal law relating to air or water pollution.
- u. **Clean Air Act and Federal Water Pollution Control Act:** All agreements between County of Monterey and PARTY TO THE PROP 39 2.0 MOU of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

3. STANDARDS OF CONDUCT

PARTY TO THE PROP 39 2.0 MOU hereby assures that in administering this agreement, it shall comply with the standards of conduct hereinafter set out, for maintaining the integrity of the agreement and avoiding any conflict of interest in its administration.

- a. **General Assurance:** Every reasonable course of action will be taken by PARTY TO THE PROP 39 2.0 MOU in order to maintain the integrity of the expenditure of public funds and to avoid favoritism and questionable or improper conduct. This agreement will be administered in an impartial manner, free from efforts to gain personal, financial or political gain. PARTY TO THE PROP 39 2.0 MOU agrees to conform to the non-discrimination requirements as referenced in WIOA Section 188.
- b. **Conflict of Interest:** An executive or employee of PARTY TO THE PROP 39 2.0 MOU, an elected official in the area or a member of the local Monterey County WDB will not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed, in whole or in part, by PARTY TO THE PROP 39 2.0 MOU or County of Monterey: supplies, materials, equipment or services purchased with agreement funds will be used solely for purposes allowed under this agreement. No member of the local Monterey County WDB will cast a vote on the provision of services by that member (or any organization, which that member represents) or vote on any matter which would provide direct financial benefit to that member (or immediate family of the member) or any business or organization which the member directly represents. For the purpose of this agreement, a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein has a financial interest in or a tangible personal benefit from a firm considered for a contract, subcontract, or agreement. (Reference 2 CFR Part 200.318(c)(1)(2) – Conflict of Interest) If a non-Federal entity, has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears unable to be impartial in conducting a procurement action involving a related organization. (Reference 2 CFR Part 200.318(c)(2))
- c. **Buy-American:** PARTY TO THE PROP 39 2.0 MOU agrees that, as stated in sec. 502 of WIOA, all funds authorized in WIOA and Wagner- Peyser must be expended on only American made equipment and products, as required by the Buy American Act (41 U.S.C. 8301–8305).
- d. **Nepotism:** PARTY TO THE PROP 39 2.0 MOU certifies that it shall 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. For the purpose of this agreement, the term "immediate family" means spouse (common law or otherwise), child, mother, father, brother, sister, brother/sister-in-law, son/daughter-in-law, mother/father-in-law, aunt, uncle, niece, nephew, step-parent, step-child, or such other relationship which would give rise to a substantial appearance of impropriety if the person were to be hired by PARTY TO THE PROP 39 2.0 MOU. The term "administrative capacity" means persons who have overall administrative responsibility for a program, including but not limited to, selection, hiring, or supervisory responsibilities.
- e. **Procurement:** PARTY TO THE PROP 39 2.0 MOU must comply with the County of Monterey procurement policy and procedures which reflect applicable local, State and Federal laws and regulations, and the standards identified in Uniform Guidance 2 CFR Part 200.318 – General Procurement Standards. (Reference

4. COORDINATION

- a. PARTY TO THE PROP 39 2.0 MOU will, to the maximum extent feasible, coordinate all programs and activities supported under this part with other core programs under the WIOA, including the WIOA (Adult, Dislocated Worker and Youth formula programs); Wagner-Peyser Act employment services; Adult Education and Literacy Act programs; Rehabilitation Act Title I programs; Job Corps program, YouthBuild program, Native American programs, Migrant and Seasonal Farmworker programs, and other employment and training programs at the local level. In addition to the core programs, for individuals with multiple needs to access services, PARTY TO THE PROP 39 2.0 MOU will, to the maximum extent feasible, coordinate with the following partner programs required to provide access through the America's Job Center of California or One-Stop Career Center: Career and Technical Education (Perkins), Community Services Block Grant, Indian and Native American programs, HUD Employment and Training programs, Local Veterans' Employment Representatives and Disabled Veterans' Outreach program, National Farmworker Jobs program, Senior Community Service Employment program, Temporary Assistance for Needy Families (TANF), Trade Adjustment Assistance programs, and Unemployment Compensation programs.
- b. PARTY TO THE PROP 39 2.0 MOU shall not accept referrals for participant positions funded under this agreement from any agency which charges a fee to either the individual being referred or the employing agency for the services rendered. Charges incurred in violation of this clause shall be the sole responsibility of PARTY TO THE PROP 39 2.0 MOU, and shall not be charged to either this agreement or the participant under this agreement.

5. SUBCONTRACTING

- a. PARTY TO THE PROP 39 2.0 MOU will not assign a contract resulting from this agreement or any portion thereof to a third party without the prior written consent of the County of Monterey, and any attempted assignment or subcontract without such prior written consent may cause immediate termination of the agreement.
- b. Upon approval from the County of Monterey, any of the work or services specified in this agreement which will be performed by other than PARTY TO THE PROP 39 2.0 MOU will be evidenced by a written agreement specifying the terms and conditions of such performance.
- c. PARTY TO THE PROP 39 2.0 MOU will maintain and adhere to an appropriate system, consistent with Federal, State and local law, for the award and monitoring of contracts which contain acceptable standards for insuring accountability.
- d. The system for awarding contracts will contain safeguards to insure PARTY TO THE PROP 39 2.0 MOU does not contract with any entity whose officers have been convicted of fraud or misappropriation of funds within the last two years.

6. INSURANCE

Except for city and county governmental entities, PARTY TO THE PROP 39 2.0 MOUS must, prior to commencement of this agreement, provide the County of Monterey with a "Certificate of Insurance" certifying that coverage as required herein has been obtained in accordance with the Monterey County Insurance Requirements located online at: <http://www.co.monterey.ca.us/cao/pdfs/InsuranceRequirements.pdf>.

7. RESOLUTION

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

8. FUNDING

- a. It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of congressional and legislative appropriation of funds. The parties hereby enter into this agreement in advance of confirmation of the availability of funds for the mutual benefit of both parties, in order

to avoid program and fiscal delays which would occur if the agreement was executed after that determination was made.

- b. This agreement is valid and enforceable only if (1) sufficient funds are made available by the State Budget Act of the appropriate State fiscal years covered by this agreement for the purposes of this program and; (2) sufficient funds are made available to the State by the United States Government for the fiscal years covered by this agreement for the purposes of the programs described in the scope of services. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress and Legislature or any statute enacted by the Congress and Legislature which may affect the provisions, terms, or funding of this agreement in any manner.
- c. At the expiration of the terms of this agreement or upon termination prior to the expiration of this agreement, funds not obligated for the purpose of this agreement will be immediately remitted to the County of Monterey, and shall no longer be available to PARTY TO THE PROP 39 2.0 MOU.
- d. The County of Monterey retains the right to suspend financial assistance, in whole or in part, to protect the integrity of the funds or to ensure proper operation of the program, providing PARTY TO THE PROP 39 2.0 MOU is given prompt notice and the opportunity for an informal review of the County of Monterey's decision. The Director of the Economic Development Department / Monterey County Workforce Development Board or his/her designee will perform this informal review and will issue the final administrative decision within 60 days of receiving the written request for review. Failure on the part of PARTY TO THE PROP 39 2.0 MOU to comply with the provisions of this agreement, or with the WIOA or regulations, when such failure involves fraud or misappropriation of funds, may result in immediate withholding of funds.

9. FISCAL ACCOUNTABILITY

- a. PARTY TO THE PROP 39 2.0 MOU shall establish and maintain a sound financial management system, based upon generally accepted accounting principles. An integral part of the required financial management system is a system of internal accounting controls that will provide reasonable assurance that WIOA assets are safeguarded against loss from unauthorized use or disposition, and that accounting transactions affecting WIOA fund accountability are properly charged and recorded by administrative and program cost categories to permit the preparation of accurate and supportable financial reports.
- b. PARTY TO THE PROP 39 2.0 MOU will comply with controls, record keeping and fund accounting procedure requirements of WIOA, Federal and State regulations, and directives to ensure the proper accounting for program funds paid to PARTY TO THE PROP 39 2.0 MOU by the County of Monterey through a cost reimbursement process.
- c. This agreement provides for the reimbursement of allowable costs that are identified and approved in the agreement budget, and incurred in the operation of the programs specified in the scope of services. Back-up documentation is required by PARTY TO THE PROP 39 2.0 MOU to justify reimbursement payments made under this agreement.
- d. All expenditures must be reported on an accrual basis of accounting.
- e. No cost shall be allowed under this agreement which is not specifically identified in PARTY TO THE PROP 39 2.0 MOU's approved budget. PARTY TO THE PROP 39 2.0 MOU shall not transfer funds between cost categories or adjust designated "total budget" line items without prior written approval by authorized WDB staff (applicable to cost reimbursement contracts only). Invoices for reimbursement submitted by PARTY TO THE PROP 39 2.0 MOU that include designated total line item expenditures above the total budget for that designated line item will not be paid until the cost overrun is reconciled. All limitations on expenditures specified in Federal and State fiscal requirements shall apply to this agreement.
- f. PARTY TO THE PROP 39 2.0 MOU shall not charge nor receive compensation under this agreement for any services or expenses unless said services or expenses are directly and exclusively related to the purpose of this agreement. In addition, payment may not be received by PARTY TO THE PROP 39 2.0 MOU from any other source for said services or expenses. Moreover, funds shall not be allowed for cost incurred before or after the effective dates of this agreement. PARTY TO THE PROP 39 2.0 MOU shall not use WIOA funds as security or payment for obligations or as loans for activities of other funded programs.
- g. PARTY TO THE PROP 39 2.0 MOU'S personnel whose time is charged to the budget under this agreement shall be paid on a pro-rata basis commensurate with the percentage of time devoted to the programs specified in the scope of services. Personnel costs including salary shall be reasonable. Employees of PARTY TO THE

PROP 39 2.0 MOU shall be compensated using WIOA funds under this agreement only for work performed under the terms of this agreement.

- h. County of Monterey shall not pay, and PARTY TO THE PROP 39 2.0 MOU shall not request, payment for any accrued employee fringe benefits (including vacation and sick time), which were not accrued by PARTY TO THE PROP 39 2.0 MOU's employees during the term of this agreement.
- i. In accordance with the requirements at 2 CFR 200.400(g), PARTY TO THE PROP 39 2.0 MOU may not earn or keep any profit resulting from WIOA funds paid under this agreement, or other federal financial assistance.
- j. Any excess of revenue over costs incurred for services provided by PARTY TO THE PROP 39 2.0 MOU must be included in program income. (WIOA secs. 194(7)(A)–(B)). Interest income earned on funds received under WIOA and Wagner-Peyser must be included in program income. (WIOA sec.194(7)(B)(iii)) Accordingly, these funds may be retained by PARTY TO THE PROP 39 2.0 MOU to underwrite additional training or training related services pursuant to the project or program that generated them, consistent with the purposes of WIOA. When PARTY TO THE PROP 39 2.0 MOU ultimately discontinues the provision of all WIOA training and/or services described in this agreement, program income remaining shall be returned to the County of Monterey.
- k. PARTY TO THE PROP 39 2.0 MOU shall make available to the County of Monterey, upon request, a complete and detailed record or cost allocation of any expenses that are, in whole or in part, supported with program funds. This detailed account shall include percentages and total contributions from both WIOA and non-WIOA sources. Shared expenses may include, but are not necessarily limited to the following: staff salaries, facilities, equipment, etc.
- l. Travel expenses when permitted should be made at the agency rate per mile, but the rate cannot exceed the amount allowed by the County of Monterey. (Reference Monterey County travel expense reimbursement policy, located online at:
http://www.co.monterey.ca.us/auditor/pdfs/county_travel_business_expense_policy_12-5-12.pdf)

10. PAYMENT OF AUTHORIZED EXPENDITURES

- a. Subject to receipt of funds from the State, County of Monterey agrees to reimburse PARTY TO THE PROP 39 2.0 MOU for expenditures authorized in the agreement budget. Financial reports and invoices are due to the fiscal unit of the Monterey County Economic Development Department/Workforce Development Board by the 15th working day of each month and shall include all obligations, expenditures and accruals incurred during the previous month, unless otherwise specified by the County of Monterey. Late submission of financial reports and invoices are subject to withholding of payment due to non-compliance with PARTY TO THE PROP 39 2.0 MOU'S agreement to submit timely and accurate reports and invoices. The WDB's Fiscal Unit shall pay the certified invoice within 30 days of receiving the certified invoice. Financial information reported on claims must be directly linked to records maintained by PARTY TO THE PROP 39 2.0 MOU which support actual delivery of services as outlined in the existing agreement between PARTY TO THE PROP 39 2.0 MOU and the County of Monterey. The County of Monterey shall be the sole judge of what constitutes adequate supporting documentation.
- b. PARTY TO THE PROP 39 2.0 MOU shall be paid in accordance with the agreement and budget, not to exceed the maximum amount specified. Any cost incurred by PARTY TO THE PROP 39 2.0 MOU over and above the maximum amount obligated by the agreement and budget shall be at the sole risk and expense of PARTY TO THE PROP 39 2.0 MOU.

11. PERFORMANCE ACCOUNTABILITY

- a. PARTY TO THE PROP 39 2.0 MOU, commencing as of the date of execution of this agreement by both parties, shall perform all the functions set forth in the agreement scope of services. Adequate performance under this agreement is essential and PARTY TO THE PROP 39 2.0 MOU shall measure its performance results against goals and performance standards provided by this agreement. Measured performance below goals standards will constitute noncompliance with the terms of this agreement.
- b. It is the responsibility of PARTY TO THE PROP 39 2.0 MOU to bring to the attention of the County of Monterey areas of performance which are below goals and standards and, with respect to each such area, prepare a corrective action plan or a statement justifying modification of operational plans. In addition, upon receipt of any monitoring report or other communication identifying areas of concern, a corrective action plan

must be submitted to the County of Monterey within the time frame identified in the report. A corrective action plan shall consist of the following:

- (1) Specific Actions to be taken
 - (2) The objective of each action
 - (3) Completion dates
 - (4) Person(s) responsible
 - (5) Result(s) to be accomplished
- c. PARTY TO THE PROP 39 2.0 MOU shall submit all corrective plans to WDB staff for written approval. If approved, PARTY TO THE PROP 39 2.0 MOU shall keep the County of Monterey aware on a continued basis until the corrective action plan results are accomplished. The County of Monterey reserves the right to require modifications to the corrective action plan, satisfactory to the County of Monterey, in the event of failure by PARTY TO THE PROP 39 2.0 MOU to achieve the specified results.
- d. Failure of PARTY TO THE PROP 39 2.0 MOU to satisfy administrative standards and/or performance goals may result in the immediate reduction of service levels to new applicants and/or enrollees by the County of Monterey. Such reduction will be accompanied by a proportionate decrease in obligated agreement funds.

12. MAINTENANCE OF EFFORT

PARTY TO THE PROP 39 2.0 MOU shall comply with the following maintenance of effort requirements:

- a. PARTY TO THE PROP 39 2.0 MOU warrants that participant positions funded through this agreement are in addition to those that would otherwise be financed by PARTY TO THE PROP 39 2.0 MOU without assistance under WIOA.
- b. Participant positions funded through this agreement shall: (1) result in an increase in employment opportunities over those that would otherwise be available; (2) not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-over time work, wages or employment benefits; (3) not impair existing contracts for service or result in a substitution of Federal funds for other funds in connection with work that would otherwise be performed; (4) not substitute public service and/or work experience positions for existing jobs.
- c. PARTY TO THE PROP 39 2.0 MOU will not terminate, layoff or reduce the working hours of an employee for the purpose of hiring an individual with funds available under WIOA.
- d. PARTY TO THE PROP 39 2.0 MOU will not hire any person using funds available under WIOA when any other person is on layoff for the same or substantially equivalent job.

13. AMENDMENTS

This agreement may be unilaterally modified by the County of Monterey, under the following circumstances:

- a. There is a decrease in Federal or State funding levels.
- b. Funds awarded to PARTY TO THE PROP 39 2.0 MOU have not been expended in accordance with the budget included in the approved PARTY TO THE PROP 39 2.0 MOU'S plan. This will occur if, after consultation with PARTY TO THE PROP 39 2.0 MOU, the County of Monterey has determined, in a manner consistent with State and Federal law, regulations and policies, that funds will not be spent in a timely manner.
- c. There is a change in State and Federal law or regulation requiring a change in the provisions of this agreement.
- d. An amendment is required to change PARTY TO THE PROP 39 2.0 MOU'S name as listed on this agreement. Upon receipt of legal documentation of the name change, the County of Monterey will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

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

14. REPORTING

- a. PARTY TO THE PROP 39 2.0 MOU will compile and submit reports of activities, performance and expenditures by the specified dates prescribed by the County of Monterey. All expenditure reports must be submitted upon the accrual basis of accounting. Failure to adhere to the reporting requirements of this agreement will result in funds not being paid.
- b. PARTY TO THE PROP 39 2.0 MOU shall submit to County of Monterey all required reports on a timely basis as delineated by County of Monterey. PARTY TO THE PROP 39 2.0 MOU shall submit written monthly status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken or other reports determined to be necessary by the County of Monterey. These reports are due to the WDB staff, as requested in writing. PARTY TO THE PROP 39 2.0 MOU also shall submit on a timely basis all required agreement supplemental documents.

15. TERMINATION

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

- a. **Termination for Convenience:** Either the County of Monterey or PARTY TO THE PROP 39 2.0 MOU may request a termination, in whole or in part, for convenience. PARTY TO THE PROP 39 2.0 MOU will give a ninety (90) calendar day advance notice in writing to the County of Monterey. The County of Monterey will give a ninety (90) calendar day advance notice in writing to PARTY TO THE PROP 39 2.0 MOU.
- b. **Termination for Cause:** The County of Monterey may terminate this agreement, in whole or in part, when it has determined that PARTY TO THE PROP 39 2.0 MOU has substantially violated a specific provision of the WIOA regulations, the Uniform Guidance, or implementing State legislation and corrective action has not been taken.

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

Notices to the County of Monterey will be addressed to:
 Joyce Aldrich, Executive Director
 Monterey County Workforce Development Board
 730 La Guardia Street
 Salinas, CA 93905

Notices to PARTY TO THE PROP 39 2.0 MOU will be addressed to:
 Enrique Arreola, Director
 San Benito County Workforce Development Board
 1111 San Felipe Road, Suite 108
 Hollister, California 95023

16. RECORDS MAINTENANCE & RETENTION

- a. If participants are served under this agreement, PARTY TO THE PROP 39 2.0 MOU will use the Monterey County's Virtual Job Center <https://www.ajccmontereycounty.org> and/or CalJOBS <https://www.caljobs.ca.gov>, online case management systems as prescribed by the County of Monterey.
- b. PARTY TO THE PROP 39 2.0 MOU will retain all records pertinent to this agreement for a period of three (3) years from the date of final payment of this agreement. If, at the end of three (3) years, there is litigation or an audit involving those records, PARTY TO THE PROP 39 2.0 MOU will retain the records until the resolution of such litigation or audit. (Refer to Uniform Guidance, Subpart D, Part 200.333-200.337.)
- c. The County of Monterey, State of California, and/or the U.S. DOL, or their designee (refer to Uniform Guidance, Subpart F, Part 200.500-200.521) will have access to and right to examine, monitor and audit all records, documents, conditions and activities related to programs funded by this agreement. For purposes of this section, "access to" means that PARTY TO THE PROP 39 2.0 MOU shall at all times maintain within the State of California a complete set of records and documents related to programs funded by this agreement. PARTY TO THE PROP 39 2.0 MOU shall comply with this requirement regardless of whether it ceases to operate or maintain a presence within the State of California before the expiration of the agreement. PARTY TO THE PROP 39 2.0 MOU'S performance under the terms and conditions herein specified will be subject to an evaluation by the County of Monterey of the adequacy of the services performed, timeliness of response and a general impression of the competency of PARTY TO THE PROP 39 2.0 MOU'S organization and its staff.

- d. Portable Document Format (PDF), electronic, machine readable information or paper documentation is allowed for the purpose of records maintenance and retention, as long as there are appropriate and reasonable internal controls in place to safeguard against any inappropriate alteration of records. (Reference Uniform Guidance 2 CFR 200.335 – Methods for Collection, Transmission and Storage of Information) To the extent possible, PARTY TO THE PROP 39 2.0 MOUS should use the Virtual Job Center and/or CalJOBS systems as prescribed by the County of Monterey, as both a reporting and a case management tool.

17. AUDITS

- a. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted in accordance with 2 CFR Part 200.514.
- b. PARTY TO THE PROP 39 2.0 MOU will maintain and make available to auditors, at all levels, accounting and program records including supporting source documentation and cooperate with all auditors. PARTY TO THE PROP 39 2.0 MOU must follow the audit requirements (single audit or program-specific audit requirement) of Uniform Guidance 2 CFR, Part 200 and DOL Exceptions 2 CFR Part 2900.
- c. Auditors performing monitoring or audits of PARTY TO THE PROP 39 2.0 MOU will immediately report to the County of Monterey any incidents of fraud, abuse or other criminal activity in relation to this agreement, the WIOA or its regulations.

18. DISALLOWED COSTS

- a. Except to the extent that the State determines it will assume liability, PARTY TO THE PROP 39 2.0 MOU will be liable for and will repay the County of Monterey, any amounts expended under this agreement found not to be in compliance with the WIOA including, but not limited to, disallowed costs. Such repayment will be from funds (Non-Federal), other than those received under the WIOA. Payment of any disallowed costs must be made within 30 days of notification of the disallowed costs, unless otherwise specified by County of Monterey.
- b. PARTY TO THE PROP 39 2.0 MOU shall be notified of all final determinations made by the County of Monterey regarding audit reports, independent monitoring reports, and WDB administrative findings by a final determination letter.
- c. If PARTY TO THE PROP 39 2.0 MOU fails to refund any disallowed cost within 30 days, County of Monterey may, at its sole discretion, terminate any and all agreements with PARTY TO THE PROP 39 2.0 MOU effective immediately thereon.

19. CONFLICTS

- a. PARTY TO THE PROP 39 2.0 MOU will cooperate in the resolution of any conflict with the County of Monterey that may occur from the activities funded under this agreement.
- b. In the event of a dispute between the County of Monterey and PARTY TO THE PROP 39 2.0 MOU over any part of this agreement, the dispute may be submitted to non-binding arbitration upon the consent of both the County of Monterey and PARTY TO THE PROP 39 2.0 MOU. An election for arbitration pursuant to this provision will not preclude either party from pursuing any remedy for relief otherwise available.

20. PROPERTY

- a. All property, whether finished or unfinished documents, data, studies and reports prepared or purchased by PARTY TO THE PROP 39 2.0 MOU under this agreement, will be disposed of in accordance with the direction of the County of Monterey. In addition, any tools and/or equipment furnished to PARTY TO THE PROP 39 2.0 MOU by the County of Monterey and/or purchased by PARTY TO THE PROP 39 2.0 MOU with funds pursuant to this agreement, will be limited to the use within the activities outlined in this agreement and will remain the property of the DOL and/or the County of Monterey. Upon termination of this agreement, PARTY TO THE PROP 39 2.0 MOU will immediately return such tools and/or equipment to the County of Monterey or dispose of them as prescribed by the County of Monterey.
- b. All non-expendable property acquired with program funds provided, in whole or in part, under this agreement shall become property of the County of Monterey at the time of acquisition and shall be returned to the County of Monterey upon termination of the agreement and completion of the program or at such time as the County makes a request for such property. Non-expendable property is defined as property which will not be

consumed or lose its identity during the agreement term, has a unit value in excess of \$1,000 at the time of purchase, and is expected to have a useful life of one year or more.

- c. PARTY TO THE PROP 39 2.0 MOU shall obtain advance written approval of County of Monterey for purchase of any non-expendable equipment having a unit purchase price of \$1,000 or more, and use expectancy in excess of one year.
- d. Property records for non-expendable property shall be accurately maintained by PARTY TO THE PROP 39 2.0 MOU and shall reflect the following:
 - (1) a description of the property;
 - (2) acquisition date and costs;
 - (3) supplier; and
 - (4) percentage of the cost of the property purchased with funds from this agreement.
- e. PARTY TO THE PROP 39 2.0 MOU shall insure that adequate safeguards are provided to prevent loss, damage or theft of the property. In the case of all suspected thefts and if there is any possibility of a criminal cause of the loss or damage, PARTY TO THE PROP 39 2.0 MOU shall report the loss, damage, or theft to the police, unless the possible crime occurred in another jurisdiction, in which case PARTY TO THE PROP 39 2.0 MOU shall report it to the law enforcement authorities with that jurisdiction and PARTY TO THE PROP 39 2.0 MOU shall provide a copy of the law enforcement report to the WDB.

21. INTELLECTUAL PROPERTY PROVISIONS

- a. **Federal Funding:** In any agreement funded, in whole or in part, by the Federal government, County of Monterey may acquire and maintain the Intellectual Property rights, title, and ownership, which result directly or indirectly from the agreement, except as provided in 37 CFR Par 401.14. However, pursuant to Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900, the Federal government shall have a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.
- b. **Ownership:**
 - (1) Except where County of Monterey has agreed in a signed writing to accept a license, County of Monterey shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by PARTY TO THE PROP 39 2.0 MOU or County of Monterey and which result directly or indirectly from this agreement.
 - (2) For the purpose of this agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copy rights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will, any data or information maintained, collected or stored in the ordinary course of business by the County of Monterey, and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other State, country or jurisdiction.
 - a) For the purpose of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos, computer software and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purpose of producing those final products. "Works" does not include articles submitted to peer review or reference journals or independent research projects.
 - (3) In the performance of this agreement, PARTY TO THE PROP 39 2.0 MOU may exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this agreement. In addition,

under this agreement, PARTY TO THE PROP 39 2.0 MOU may access and utilize certain of County of Monterey Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, PARTY TO THE PROP 39 2.0 MOU shall not use any of County of Monterey's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of the County of Monterey. Except as otherwise set forth herein, neither PARTY TO THE PROP 39 2.0 MOU nor County of Monterey shall give any ownership interest in or rights to its Intellectual Property to the other party. If, during the term of this agreement, PARTY TO THE PROP 39 2.0 MOU accesses any third-party Intellectual Property that is licensed to County of Monterey, PARTY TO THE PROP 39 2.0 MOU agrees to abide by all license and confidentiality restrictions applicable to County of Monterey in the third-party's license agreement.

- (4) PARTY TO THE PROP 39 2.0 MOU agrees to cooperate with County of Monterey in establishing or maintaining PARTY TO THE PROP 39 2.0 MOU's exclusive rights in the Intellectual Property, and in assuring County of Monterey's sole rights against third parties with respect to the Intellectual Property. If PARTY TO THE PROP 39 2.0 MOU enters into any agreements or subcontracts with other parties in order to perform this agreement, PARTY TO THE PROP 39 2.0 MOU shall require the terms of the agreement(s) to include all Intellectual Property provisions of paragraph twenty-one (21). Such terms must include, but are not limited to, the subParty to the Prop 39 2.0 MOU assigning and agreeing to assign to PARTY TO THE PROP 39 2.0 MOU all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subParty to the Prop 39 2.0 MOU, PARTY TO THE PROP 39 2.0 MOU, or County of Monterey, and which result directly or indirectly from this agreement or any subcontract.
- (5) Pursuant to paragraph twenty-one (21) (b) (4) of the Intellectual Property Provisions, the requirement for the County of Monterey to include all Intellectual Property Provisions of paragraph twenty-one (21) of the Intellectual Property Provisions in all agreements and subcontracts it enters into with other parties does not apply to agreements or subcontracts that are for customized and on-the-job training as authorized under 20 CFR 663.700-730.
- (6) PARTY TO THE PROP 39 2.0 MOU further agrees to assist and cooperate with County of Monterey in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce PARTY TO THE PROP 39 2.0 MOU's Intellectual Property rights and interests.

c. Retained Rights / License Rights:

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by PARTY TO THE PROP 39 2.0 MOU or County of Monterey and which result directly or indirectly from this agreement, PARTY TO THE PROP 39 2.0 MOU shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement. PARTY TO THE PROP 39 2.0 MOU hereby grants to County of Monterey, without additional compensation, a permanent, non-exclusive, royalty-free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose of PARTY TO THE PROP 39 2.0 MOU'S Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this agreement, unless PARTY TO THE PROP 39 2.0 MOU assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent PARTY TO THE PROP 39 2.0 MOU from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that PARTY TO THE PROP 39 2.0 MOU user does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of County of Monterey or third-party, or result in a breach or default of any Intellectual Property provisions of paragraph twenty-one (21) or result in a breach of any provisions of law relating to confidentiality.

d. Copyright:

- (1) PARTY TO THE PROP 39 2.0 MOU agrees that for purposes of copyright law, all works, as defined in Intellectual Property, paragraph twenty-one (21) (b) Ownership (2) (a), of authorship made by or on behalf of PARTY TO THE PROP 39 2.0 MOU in connection with PARTY TO THE PROP 39 2.0 MOU's performance of this agreement shall be deemed "works made for hire". PARTY TO THE PROP 39 2.0 MOU further agrees that the work of each person utilized by PARTY TO THE PROP 39 2.0 MOU in connection with the performance of this agreement will be a "work made for hire"; whether that person is

an employee of PARTY TO THE PROP 39 2.0 MOU or that person has entered into an agreement with PARTY TO THE PROP 39 2.0 MOU to perform the work. PARTY TO THE PROP 39 2.0 MOU shall enter into a written agreement with any such person that: (i) all work performed for PARTY TO THE PROP 39 2.0 MOU shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all rights, title, and interest to the County of Monterey to any work product made, conceived, derived from or reduced to practice by PARTY TO THE PROP 39 2.0 MOU or County of Monterey and which result directly or indirectly from this agreement. (Refer to Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900.)

- (2) All materials, including, but not limited to, computer software, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by PARTY TO THE PROP 39 2.0 MOU or County of Monterey and which result directly or indirectly from this agreement may not be reproduced or disseminated without prior written permission from the County of Monterey.

e. **Patent Rights:** With respect to inventions (refer to Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900), made by PARTY TO THE PROP 39 2.0 MOU in the performance of this agreement, which did not result from research and development specifically included in PARTY TO THE PROP 39 2.0 MOU's agreement scope of services, PARTY TO THE PROP 39 2.0 MOU hereby grants to County of Monterey a license as described under paragraph twenty-one (21) (c) for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within PARTY TO THE PROP 39 2.0 MOU's agreement scope of services, then PARTY TO THE PROP 39 2.0 MOU agrees to assign to County of Monterey, without additional compensation, all its rights, title and interest in and to such inventions and to assist the County of Monterey in securing United States and foreign patents with respect thereto.

f. **Third-Party Intellectual Property:** Except as provided herein, PARTY TO THE PROP 39 2.0 MOU agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of PARTY TO THE PROP 39 2.0 MOU or third-party without first: (i) obtaining County of Monterey's prior written approval; and (ii) granting to or obtaining for County of Monterey, without additional compensation, a license, as described in paragraph twenty-one (21) (c), for any of PARTY TO THE PROP 39 2.0 MOU or third-party's Intellectual Property in existence prior to the effective date of this agreement. If such a license upon these terms is unattainable, and the County of Monterey determines that the Intellectual Property should be included in or is required for PARTY TO THE PROP 39 2.0 MOU's performance of this agreement, PARTY TO THE PROP 39 2.0 MOU shall obtain a license under terms acceptable to the County of Monterey.

g. **Warranties:**

- (1) PARTY TO THE PROP 39 2.0 MOU represents and warrants that:

- a) It has secured and will secure all rights and licenses necessary for its performance of this agreement.
- b) Neither PARTY TO THE PROP 39 2.0 MOU's performance of this agreement, nor the exercise by either party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by PARTY TO THE PROP 39 2.0 MOU or County of Monterey and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any State, the United States, or any foreign country. There are currently no actual or threatened claims by any such third-party based on an alleged violation of any such right by PARTY TO THE PROP 39 2.0 MOU.
- c) Neither PARTY TO THE PROP 39 2.0 MOU's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
- d) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers, or releases from all authors.
- e) Of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites locations, property or props that may be used or shown.

- f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to County of Monterey in this agreement.
 - g) It has appropriate systems and controls in place to ensure that State and Federal funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way PARTY TO THE PROP 39 2.0 MOU's performance of this agreement.
- (2) COUNTY OF MONTEREY MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE NOW EXISTING OR SUBSEQUENTLY ISSUED.

h. Intellectual Property Indemnity:

- (1) PARTY TO THE PROP 39 2.0 MOU shall indemnify, defend and hold harmless County of Monterey and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorneys fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim action, or proceeding, commenced or threatened) to which any of the indemnitees may be subject, whether or not PARTY TO THE PROP 39 2.0 MOU is a party to any pending or threatened litigations, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of PARTY TO THE PROP 39 2.0 MOU pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of County of Monterey's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by PARTY TO THE PROP 39 2.0 MOU or County of Monterey and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that was issued after the effective date of this agreement. County of Monterey reserves the right to participate in and/or control, at PARTY TO THE PROP 39 2.0 MOU's expense, any such infringement action brought against County of Monterey.
- (2) Should any Intellectual Property licensed by PARTY TO THE PROP 39 2.0 MOU to County of Monterey under this agreement become the subject of an Intellectual Property infringement claim, PARTY TO THE PROP 39 2.0 MOU will exercise its authority reasonably and in good faith to preserve County of Monterey's right to use the licensed Intellectual Property in accordance with this agreement at no expense to County of Monterey. County of Monterey shall have the right to monitor and appear through its own counsel (at PARTY TO THE PROP 39 2.0 MOU's expense) in any such claim or action. In the defense or settlement of the claim, PARTY TO THE PROP 39 2.0 MOU may obtain the right for County of Monterey to continue using the licensed Intellectual Property or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, County of Monterey may be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) PARTY TO THE PROP 39 2.0 MOU agrees that damages alone would be inadequate to compensate County of Monterey for breach of any term of these Intellectual Property provisions of paragraph twenty-one (21) by PARTY TO THE PROP 39 2.0 MOU. PARTY TO THE PROP 39 2.0 MOU acknowledges County of Monterey would suffer irreparable harm in the event of such breach and agrees County of Monterey shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

- i. **Survival:** The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule.

22. CONFIDENTIALITY REQUIREMENTS

The County of Monterey and PARTY TO THE PROP 39 2.0 MOU will exchange various kinds of information pursuant to this agreement. That information will include data, applications, program files, and databases. These data and information are confidential when they define an individual or an employing unit. Confidential information requires special precautions to protect it from unauthorized use, access, disclosure, modification, and destruction. The sources of information may include, but are not limited to, the County of Monterey, State of California EDD, California Department of Social Services, California Department of Education, California Department of Corrections and Rehabilitation, County Welfare Department(s), County IV-D Directors Office of Child Support, Office of the District Attorney, California Department of Mental Health, California Office of Community Colleges and Department of Alcohol and Drug Programs.

The County of Monterey and PARTY TO THE PROP 39 2.0 MOU agree that:

- a. Each party must recognize and safeguard personally identifiable information (PII) and information designated as sensitive in accordance with Uniform Guidance 2 CFR 200.303 – Safeguarding Personally Identifiable Information. PARTY TO THE PROP 39 2.0 MOU must take reasonable measures to safeguard protected PII, as well as any information that the County of Monterey designates as sensitive. Both PARTY TO THE PROP 39 2.0 MOU and County of Monterey must meet the requirements in Training and Employment Guidance letter (TEGL) 39-11, Guidance on the Handling and Protection of Personally Identifiable Information, located at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7872.
- b. Each party shall keep all information that is exchanged between them in the strictest confidence and make sure information available to their respective employees is only on a “need-to-know” basis.
- c. Each party shall provide security sufficient to ensure protection of confidential information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect this information from reasonable unanticipated threats to the security or confidentiality of the information.
- d. PARTY TO THE PROP 39 2.0 MOU agrees that information obtained under this agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than those specifically identified in this agreement.
 - (1) Aggregate Summaries: All reports and/or publications developed by PARTY TO THE PROP 39 2.0 MOU based on data obtained under this agreement shall contain confidential data in aggregated or statistical summary form only. “Aggregated” refers to a data output that does not allow identification of an individual or employer unit.
 - (2) Publication: Prior to publication, PARTY TO THE PROP 39 2.0 MOU shall carefully analyze aggregated data outputs to ensure the identity of individuals and/or employer units cannot be inferred pursuant to Unemployment Insurance Code Section 1094(c). Personal identifiers must be removed. Geographic identifiers should be specified only in large areas and as needed, and variables should be recorded in order to protect confidentiality.
 - (3) Minimum Data Cell Size: The minimum data cell size or derivation thereof shall be three participants for any data table released to outside parties or to the public.
- e. Each party agrees that no disaggregate data, identifying individuals or employers, shall be released to outside parties or the public.
- f. PARTY TO THE PROP 39 2.0 MOU shall notify the County of Monterey of any actual or attempted information security incidents, within 24 hours of initial detection, by telephone at (831)759-6644 or (831)796-6434. Information security incidents include, but are not limited to, any event (intentional or unintentional), that causes the loss, damage, or destruction, or unauthorized access, use, modification, or disclosure of information assets. PARTY TO THE PROP 39 2.0 MOU shall cooperate with the County of Monterey in any investigation of security incidents. The system or device affected by an information security incident and containing confidential data obtained in the administration of this program shall be immediately removed from operation upon confidential data exposure or a known security breach. It shall remain removed from operation until correction and mitigation measures are applied. If PARTY TO THE PROP 39 2.0 MOU learns of a breach in the security of the system which contains confidential data obtained under this agreement, then PARTY TO THE PROP 39 2.0 MOU must provide notification to individuals pursuant to Civil Code Section 1798.82.
- g. PARTY TO THE PROP 39 2.0 MOU shall provide for the management and control of physical access to information assets (including personal computer systems, computer terminals, mobile computing devices, and

various electronic storage media) used in performance of this agreement. This shall include, but is not limited to, security measures to physically protect data, systems, and workstations from unauthorized access and malicious activity; the prevention, detection, and suppression of fires; and the prevention, detection, and minimization of water damage.

- h. At no time will confidential data obtained pursuant to this agreement be placed on a mobile computing device or on any form of removable electronic storage media of any kind unless the data are fully encrypted.
- i. Each party shall provide its employees with access to confidential information with written instructions fully disclosing and explaining the penalties for unauthorized use or disclosure of confidential information found in Section 1798.55 of the Civil Code, Section 502 of the Penal Code, Section 2111 of the Unemployment Insurance Code, Section 10850 of the Welfare and Institutions Code and other applicable local, State and Federal laws.
- j. Each party shall (where it is appropriate) store and process information in electronic format, in such a way that unauthorized persons cannot reasonably retrieve the information by means of a computer.
- k. Each party shall promptly return to the other party confidential information when its use ends, or destroy the confidential information utilizing an approved method of destroying confidential information: shredding, burning, or certified or witnessed destruction. Magnetic media are to be degaussed or returned to the other party.
- l. If the County of Monterey or PARTY TO THE PROP 39 2.0 MOU enters into an agreement with a third-party to provide WIOA services, the County of Monterey and PARTY TO THE PROP 39 2.0 MOU agree to include these data and security and confidentiality requirements in the agreement with that third-party. In no event, shall said information be disclosed to any individual outside of that third-party's authorized staff, subParty to the Prop 39 2.0 MOU(s), service providers, or employees.
- m. PARTY TO THE PROP 39 2.0 MOU may, in its program operations, allow an individual to register for resume-distribution services at the same time the individual enrolls in the Virtual Job Center or CalJOBS. PARTY TO THE PROP 39 2.0 MOU shall ensure that it and all subParty to the Prop 39 2.0 MOUs comply with the Intellectual Property requirements of paragraph twenty-one (21) of this agreement, the confidentiality requirements of paragraph twenty-two (22) of this agreement and any other terms of this agreement that may be applicable. In addition, the following requirements must be adhered to by PARTY TO THE PROP 39 2.0 MOU and its subParty to the Prop 39 2.0 MOUs:
 - (1) All client information submitted over the Internet to PARTY TO THE PROP 39 2.0 MOU and/or subParty to the Prop 39 2.0 MOU(s) databases must be protected, at a minimum, by 128-bit Secure Socket Layer (SSL) encryption. Client's social security numbers must be stored in a separate database within PARTY TO THE PROP 39 2.0 MOU and/or subParty to the Prop 39 2.0 MOU(s) network of servers, and protected by a firewall and a secondary database server firewall or AES1 data encryption. If a PARTY TO THE PROP 39 2.0 MOU and/or subParty to the Prop 39 2.0 MOU(s) obtain confidential information, the agreement between PARTY TO THE PROP 39 2.0 MOU and its subParty to the Prop 39 2.0 MOU(s) must specifically state the purpose for the data collection and the term of records retention must be stated, and directly related, to the purpose and use of the information. In accordance with Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900, social security numbers and other client specific information shall not be retained for more than three years after a client completes services. PARTY TO THE PROP 39 2.0 MOU and/or subParty to the Prop 39 2.0 MOU(s) should extend this period, only if any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three-year retention period. In this case, the records should be maintained until completion of the action and resolution of all issues arising from it, or until the close of the three-year retention period, whichever is later.
 - (2) Client information (personal information that identifies a client such as name and social security number) and/or demographic information of a client (such as wage history, address, and previous employment) shall not be used as a basis for commercial solicitation during the time the client or agency is using PARTY TO THE PROP 39 2.0 MOU and/or subParty to the Prop 39 2.0 MOU(s) services. Client information and/or demographic information shall not be used for any purposes other than those specific program purposes set forth in PARTY TO THE PROP 39 2.0 MOU and subParty to the Prop 39 2.0 MOU(s) agreement scope of services.
 - (3) PARTY TO THE PROP 39 2.0 MOU must give an America's Job Center of California (Job Center) or One-Stop Career Center (One-Stop) client the option to use the Job Center or One-Stop services, including

Virtual Job Center or CalJOBS, even if he or she chooses not to use any services of PARTY TO THE PROP 39 2.0 MOU and/or subParty to the Prop 39 2.0 MOU(s). This option shall be prominently, clearly, and immediately communicated to the client upon registration within the Job Center or One-Stop for the Virtual Job Center or CalJOBS. This obligation applies even if PARTY TO THE PROP 39 2.0 MOU's and/or subParty to the Prop 39 2.0 MOU's resume-distribution services, or any other services are offered to the client.

- (4) PARTY TO THE PROP 39 2.0 MOU and/or subParty to the Prop 39 2.0 MOU(s) must clearly disclose all of its potential and intended uses of the client's personal and/or demographic information for the services the client seeks and for any other services PARTY TO THE PROP 39 2.0 MOU and/or subParty to the Prop 39 2.0 MOU(s) offers. PARTY TO THE PROP 39 2.0 MOU and/or subParty to the Prop 39 2.0 MOU(s) shall not use a client's personal and/or demographic information without the client's prior permission. A link to PARTY TO THE PROP 39 2.0 MOU and/or subParty to the Prop 39 2.0 MOU(s) privacy policy shall appear prominently on the registration screens that list the potential and intended uses of the client's personal and/or demographic information.
- (5) When the County of Monterey modifies State automated systems such as the CalJOBS or VOS systems, it shall provide reasonable notice of such changes to PARTY TO THE PROP 39 2.0 MOU and/or subParty to the Prop 39 2.0 MOU(s). PARTY TO THE PROP 39 2.0 MOU shall be responsible to communicate such changes to its subParty to the Prop 39 2.0 MOU(s) in the local area.
- n. Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation.