

**AGREEMENT # 11 – 04 I
FOR
INDEPENDENT CONTRACTOR SERVICES**

This Agreement for Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and Tulare County Workforce Investment Board ("Contractor") as of November 1, 2011.

Recitals

WHEREAS, the County has a need for services involving Workforce Investment Act services to assist in State Energy Sector and Partnership and Training Grant objectives; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. **Scope of Work**

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

2. Consideration

2.1 County shall pay Contractor as set forth in Exhibit A.

2.2 Except as expressly provided in Exhibit A of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

3. Term

3.1 The term of this Agreement shall be from November 1, 2011 to January 28, 2013, unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

6. Insurance

6.1 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

6.4 The Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.

7. Defense and Mutual Governmental Indemnification

7.1 Each Party mutually agrees to indemnify, hold harmless, and defend the other Party, their boards and commissions, officers, agents, employees, and volunteers (collectively, the "indemnified Parties") in an amount equal to its proportionate share of liability on a comparative fault basis. This indemnity obligation shall exist with respect to any claim, loss, liability, damage, lawsuit, cost or expense that arises out of, or is any way related to, the performance of services pursuant to this Agreement. This indemnity obligation extends, without limitation, to any injury, death, loss, or damage which occurs in the performance of the Agreement and that is sustained by a third party, agent, or contractor of a Party. Each Party executing this Agreement certifies that it has adequate self insured retention of funds to meet any obligation arising from this Agreement, and it shall continue to maintain such funds throughout the Term of this Agreement. Notwithstanding the foregoing, nothing herein shall be construed to require any Party to indemnify any other Party from any Claim arising from the sole negligence or willful misconduct of another Party. Nothing in this section shall be construed as authorizing an award of attorney fees in any action on or to enforce the terms of this Agreement. "

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

7.3 At its sole discretion, the indemnified Party may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the indemnitor of any obligation imposed by this Agreement. The Parties shall notify each other promptly of any claim, action or proceeding and cooperate fully in the defense. The Parties agree to defend themselves from any claim, action or proceeding arising out of the concurrent acts or omissions of each Party. In such cases, the Parties agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs. Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, the Parties may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault."

8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Confidentiality

The Contractor agrees to keep confidential all participant information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11. Nondiscrimination

During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex, or sexual orientation. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus Alliance Worknet
Attention: Jeffrey Rowe
251 E. Hackett Rd
Modesto, CA 95358
Phone: (209) 558-2150

To Contractor: Tulare County Workforce Investment Board
Attention: Adam Peck
309 West Main Street, Suite 120
Visalia, CA 93291
Phone: (559) 713-5200

15. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the day and year first hereinabove written.

| | |
|---|--|
| COUNTY OF STANISLAUS By: _____ Jeffrey Rowe, Alliance Worknet Director "County" | Tulare County By: _____ Chairman, Board of Supervisors By: _____ Adam Peck WIB Executive Director "Contractor" |
| APPROVED AS TO FORM: John P. Doering, County Counsel By: _____ County Counsel | APPROVED AS TO FORM Kathleen Bales-Lange, County Counsel By: _____ Deputy |

EXHIBIT A

A. SCOPE OF WORK

The Contractor shall provide State Energy Sector Partnership Grant services under this Agreement as follows:

The Contractor will:

1. Provide staff time and materials dedicated to, but not limited to, the following activities and services related to the State Energy Sector Partnership (SESP) Grant:
 - Participation in quarterly grant meetings, as scheduled;
 - Outreach and recruitment of SESP participants;
 - Case management, job development and follow up activities for SESP participants.
2. Submit their proposed SESP Training Plan to Alliance Worknet (AW) and receive AW approval of their training plan prior to enrolling any SESP Grant participants. See Exhibit B – SESP Training Plan Form
3. Determine eligibility of applicants, create and maintain a comprehensive participant record.
4. Provide a comprehensive assessment and develop an Individual Employment Plan/Individual Service Strategy for each enrolled adult, dislocated worker or youth participant.
5. Administer or provide all appropriate project services to a minimum of **22** eligible and enrolled participants in accordance with locally approved processes and procedures. Services must include, but are not limited to, vocational training, On-the-Job Training, and customized training in a pre-approved SESP Grant related green industry.
6. Provide a staff person responsible for enrolling SESP participants into the Department of Labor's RAD tracking system and this staff person will update the SESP participant information on a real time basis.
7. Provide reports/data to Alliance Worknet staff when requested regarding any information related to the SESP grant objectives.
8. Comply with the following **TIME LINE of SESP TRAINING ACTIVITIES**:
 - a. All SESP enrolled participants will have completed their training no later than September 30, 2012.

ALLIANCE WORKNET will:

1. Act as the Lead Agency for the project.
2. Perform all required cumulative participant, program and fiscal tracking for State and DOL reporting.
3. Convene project meetings, conference calls or other necessary events as needed.

B. COMPENSATION

The Contractor shall be compensated for the services provided under this Agreement as follows:

1. Payment Provisions

- a) This is a cost reimbursement contract.
- b) ALLIANCE WORKNET will pay the Contractor a maximum of \$86,527 for services provided to participants of this agreement as described in Paragraph C BUDGET (below). These costs incorporate only allowable costs found in 20 CFR 652, submitted by the Contractor and verified by ALLIANCE WORKNET.

2. Invoice Provisions

- a) All invoices are to be mailed to the following address:

Alliance Worknet
FACT Unit
251 E. Hackett Rd C-2
Modesto, CA 95358

- b) Contractor will invoice Alliance Worknet for actual costs incurred during the billing period, as per Budget/Budget Narrative (Paragraph C below), of this contract.
- c) Invoices will be due on the 17th of every month following the month of service.
- d) Invoices not received within ninety **(90)** days after expenditures have been incurred will not be honored.
- e) All invoices must be received within thirty **(30)** days after contract closes to be honored.

C. BUDGET:

BUDGET DETAIL

11/1/2011 – 1/28/2013

| | |
|---|---------------------------------|
| Tulare County Workforce Investment Board | Award Amount \$86,527 |
| Budget Detail | Grand Total |
| A. Staff Salaries | \$ 2,140 |
| B. Number of full-time equivalents: _____ | |
| C. Staff Benefits | \$ 737 |
| D. Staff Benefit Rate (percent) 34.4 % | |
| E. Staff Travel | \$ |
| F. Operating Expenses (communications, facilities, utilities, maintenance, consumable supplies, audit, etc.) | \$8,653 |
| G. Furniture and Equipment | \$0 |
| 1. Small Purchase (unit cost is less than \$5,000 such as computers, desks etc.) | \$0 |
| 2. Equipment Purchase (unit cost is more than \$5,000 and useful life is more than one year.) Complete Supplemental Budget Form | \$0 |
| 3. Lease | \$0 |
| H. Consumable Testing and Instructional Materials | \$0 |
| I. Tuition Payments/Vouchers | \$ |
| J. On-the-Job Training | \$ |
| K. Participant Wages and Fringe Benefits | \$0 |
| L. Participant Support Services | \$ |
| M. Job Retention Services | \$0 |
| N. Contractual Services (Complete Supplemental Budget Form) See Exhibit A p.10 | **\$74,997 |
| O. Indirect Costs | \$0 |
| P. Other (describe): | \$0 |
| Q. Total Funding | \$86,527 |
| *Indirect costs | |
| 1. Indirect Cost Rate (percent) | |
| 2. Name of Cognizant Agency: | |

The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$86,527, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement.

D. GENERAL ASSURANCES

1. Equal Opportunity

By signing this agreement the Contractor hereby certifies under penalty of perjury that the Contractor will comply with Executive Order No. 11246, entitled "Equal Employment Opportunity", as amended by E.O. 11375 and supplemented in Department of Labor regulations (41 CFR 60). The Contractor hereby assures that it has an Equal Employment Opportunity Plan (or will adhere to that of ALLIANCE WORKNET) which is applicable to and covers staff and participants reimbursed through this contract, which declares that it does not discriminate on the basis of race, color, religion, creed, national origin, physical handicaps, sex, political affiliations or beliefs, and age, and which specifies goals and target dates to assure the implementation of that plan.

The contractor will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998, Section 188 (a) (1), including the Nontraditional Employment for Women Act of 1992; 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; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR, Part 37.

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

2. DOL Rehabilitation Requirements

The program will, to the maximum extent feasible, implement Department of Labor requirements under Section 504 of the Rehabilitation Act of 1973, as amended, and the Department of Health, Education, and Welfare's rules for Federal agency regulations.

3. Disallowed Costs

Before any funds are issued under this contract, the contractor shall stipulate how, if it becomes necessary, the contractor will repay disallowed expenditures with non-Federal funds.

4. Certification

Before any funds are issued under this contract, the contractor, if it is a private non-profit entity, will submit a copy of its certification by the Secretary of State's Office verified by the Franchise Tax Board to ALLIANCE WORKNET.

5. Disputes and Appeals

The Contractor agrees to attempt to resolve disputes arising from the contract by administrative processes and negotiations in lieu of litigation, following the appeals process established by ALLIANCE WORKNET. In connection with any appeal, the contractor shall be afforded an opportunity to be heard, and to offer evidence in support of its appeal.

6. Liability for Payments

Alliance Worknet shall be liable for payment only for services rendered prior to the effective date of the termination of the contract, provided that such services performed are in accordance with the provisions of the contract.

E. STANDARDS OF CONDUCT

1. Every reasonable course of action will be taken by the contractor in order to maintain the integrity of this 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 acquire personal, financial, or political gain. The contractor, its executive staff and employees, in administering this agreement, will avoid situations which give rise to a suggestion that any decision was influenced by prejudice, bias, special interest, or desire for personal gain.

2. Copyrights and Rights of Data

Notwithstanding any other provision of this agreement, including without limitation Section 1.2, the contractor shall comply with all WIA requirements pertaining to copyrights and rights in data. ALLIANCE WORKNET, the State, and Federal government reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for their governmental purposes, any copyrightable item developed under this contract (29 CFR 97.34, 29 CFR 97.36(i)(9), 37 CFR 401 and 35 U.S.C. 200 et seq.). This includes:

- a) Data first produced in the performance of this contract. Contractor shall have the copyright in any work or data developed under this grantor contract. When first developed, Contractor shall affix the copyright notice of 17 U.S.C. 401 or 402 and acknowledgement of County sponsorship, including the contract number, when the data is delivered to County. Contractor shall not incorporate data not developed for the contract into data delivered under this contract without ALLIANCE WORKNET's prior written approval.
 - (1) Data includes computer programs, databases, their documentation, and recorded information regardless of the media on which it is recorded, including computer software and technical data.
 - (2) Data does not include information incidental to contract administration, such as the right to use, release to others, reproduce, distribute to others, or publish data first developed or used under this contract. Contractor may protect limited rights data or restricted computer software developed under this contract from unauthorized disclosure. Contractor may establish claim to copyright of data first produced under this contract.

Contractor purchased copyright. ALLIANCE WORKNET shall have royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for their governmental purposes, any rights of copyright ownership that Contractor purchases using grant support under this contract.

3. Access to Records

The contractor will allow access by the Employment Development Department (EDD) Compliance Review Division, Alliance Worknet, the Department of Labor (DOL), the Controller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records (including computer record) of the contractor or subcontractor which are directly pertinent to charges to the program, in order to conduct audits and examinations, and make excerpts, transcripts, and photocopies; this right also includes timely and reasonable access to the contractor's and subcontractor's personnel for the purpose of interviews and discussions related to such documents.

F. CONTRACTOR ASSURANCES AND CERTIFICATIONS:

In administering programs under the Act, the contractor assures and certified that:

1. It will comply with the provisions of the Hatch Act, which limits the political activity of certain State and local government employees;
2. No person or organization, including private placement agencies, may charge a fee to any individual for the placement or referral of that individual in or to a training or employment program under the Act;
3. No funds under the Act may be used in support of any religious activity, as specified in Section 188, a. (3) of the Act;
4. No participant may be employed in the construction, operation, or maintenance of such part of any facility as is used or will be used for sectarian instruction, or as a place of religious worship;
5. Funds may not be used to support any anti-religious activities, such as the preparation or the dissemination of anti-religious materials, whether directed against any particular religion or religions, or against the practice of religion in general. This does not preclude religious organizations from the administration or operation of WIA programs, or the use of religious facilities in the operation of such programs, when those programs do not promote activities in support of, or against, religion;
6. No WIA participants who are relatives by blood, adoption, or marriage of any executive or employee of the contractor, will receive favorable treatment for enrollment in services provided by, or employment with, the contractor. For the purpose of this contract, relative by blood or marriage shall include: wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, and stepchild.
7. Lobbying Restrictions: If, as a result of this contract, an amount in excess of \$100,000 of WIA funds is received, by signing this agreement, the contractor hereby assures and certifies to the lobbying restrictions which are codified in the Byrd-Anti-Lobbying Amendment and the DOL regulations at 29 CFR Part 93.

8. No federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.
- a) 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, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, and cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - b) The undersigned shall require that the language of this certification be included in the award documents for contract transactions over \$100,000 (per OMB) at all tiers (including contracts under grants, loans, or cooperative agreements), and that all sub-recipients shall certify and disclose accordingly. (Byrd Anti-Lobbying Amendment).
 - c) This certification is a material representation of fact upon which reliance is placed when this transaction is executed. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, 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.

Failure to comply with all requirements of the certifications in this contract may result in suspension of payment under the contract or termination of the contract, or both, and the contractor may be ineligible for award of future state contracts if the department determines any of the following has occurred: (1) false information on the certifications, or (2) violation of the terms of the certifications by failing to carry out the requirements as noted above.

9. Debarment and Suspension Certification: By signing this agreement, the Contractor hereby certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR, Part 98.510, and E.O. 12689 that the prospective participant (i.e., grantee), to the best of its knowledge and belief, that it and its principals:
- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.
 - b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery or falsification, destruction of records, making false statements, or receiving stolen property.
 - c) Are not presently indicted for or otherwise criminally charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification.

- d) 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.
 - e) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.
10. For public and non-profit only: Program revenue in excess of program expenditures will be considered program income and be handled in accordance with WIA directives regarding same. Specifically, any program income generated may be used to further program objectives and be retained by the contractor for that purpose. This income must be applied against the cost category from which it was generated. If the program is not being extended, or it is not feasible to utilize the program income to further program objectives, it must be returned to ALLIANCE WORKNET. The contractor will establish procedures to track program revenues and expenditures so that program income may be clearly identified upon contract termination.

Within sixty (60) days of program termination, the contractor will notify ALLIANCE WORKNET of any program income identified and the proposed disposition of same in accordance with applicable WIA directives.

11. If, as a result of this contract, an amount in excess of \$100,000 is received, contractor must assure compliance with the applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, E.O.11738, and Environmental Protection Agency regulations (40 CFR Part 15).
12. In accordance with 29 CFR 95.48, Appendix A-5, and 29 CFR 97.36 (i) (8&9), the contractor agrees that if in the performance of the contract, a new discovery is made, new inventions are created or new patents are awarded, any or all become the property of the Federal Government and ALLIANCE WORKNET.
13. Drug-Free Workplace Certification. By signing this Agreement, the Contractor hereby certifies under the penalty of perjury under the laws of California that the Contractor 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:
- a) 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.
 - b) Establish a Drug-Free Awareness Program as required to inform employees about:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations

- c) Every employee who works on this contract will:
 - i. receive a copy of the company's drug-free statement; and,
 - ii. agree to abide by the terms of the company's statement as a condition of employment on the contract.
- 14. Contractor agrees to comply with all mandatory standards and policies related to energy efficiency which may be contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163, 89 Stat. 871) (20 CFR 97.36(i)(12) and (13)).
- 15. Sweat Free Code of Conduct:

Contractors contracting for the procurement of 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 ALLIANCE WORKNET 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. Contractor further declares under penalty of perjury that they adhere to the Sweat Free 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.
- 16. Contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of ALLIANCE WORKNET, the State, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements of paragraph a of the Sweat Free Code of Conduct.

Section N of SESP Budget

Supplemental Budget Form

| N. Contractual Services** | | |
|---|-----------------|--------------------------------------|
| Contractual Services Description – Type of Service | Cost | Service Provider If Known |
| Customized Training | \$16,350 | |
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| On the Job Training with associated staffing costs | \$58,647 | |
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| Total | \$74,997 | |

**All contractual services must be competitively procured in accordance with federal and state procurement regulations and policies. See WIA Directive WIAD00-2.

EXHIBIT B
SESP Grant Training Proposal

| | |
|--|---|
| SESP Partner Name: | Tulare County Workforce Investment Board |
| SESP Grant Amount: | \$86,527 Minimum # of Customers to be Trained: 22 |
| LWIB Contact Information | Name: <u>_Sharon Pearson_</u> E-mail Address: <u>_spearson@tularewib.org_</u> Phone Number: <u>559-713-5200</u> |
| Green Energy Focus: | <input checked="" type="checkbox"/> Renewable Energy <input checked="" type="checkbox"/> Recycling/Recycled Products <input type="checkbox"/> Water Efficiency <input type="checkbox"/> Other: _____ |
| Population(s) Served: | <input checked="" type="checkbox"/> Adult <input checked="" type="checkbox"/> Dislocated Worker <input checked="" type="checkbox"/> Youth age range: <u>18-24</u> |
| Type of Training: Check all that apply | <input checked="" type="checkbox"/> ITA /Vocational Training <input checked="" type="checkbox"/> OJT <input checked="" type="checkbox"/> Customized Training Other _____ |
| Name of Training Provider(s): | To be Determined |
| Occupational Title(s): | Pilot Plant Operators; Laboratory Technician |
| Reason(s) why this training was chosen: | <input checked="" type="checkbox"/> Business requested: Customized training will provide Incumbent workers in Tulare County renewable energy companies. Training to maintain employment status. |
| Please check appropriate box and then provide further written explanation | <input checked="" type="checkbox"/> Labor market shows demand: On the Job Training Opportunities will be provided to adult and dislocated workers with Tulare County green industry employers. _____ _____ _____ _____ <input type="checkbox"/> Other: _____ _____ _____ |
| # of Trainees: | 22 |
| Cost per Trainee: | Approximately \$3,409 |
| Estimated Total Cost of Training: | \$74,997 |
| Estimated Training Start and End Date: | To be Determined |
| Expected Outcome(s): | Employment |

