

WORKFORCE INVESTMENT ACT
VENDOR AGREEMENT
(Occupational Training)

By and Between the

CITY OF ANAHEIM

and

E. CUBICS LLC, a California limited liability company,

d.b.a. QBICS CAREER COLLEGE

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Exhibit A

Work Plan Summary

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Covenants Re: Use of Federal Funds

WORKFORCE INVESTMENT ACT

VENDOR AGREEMENT

(Occupational Training)

This **WORKFORCE INVESTMENT ACT VENDOR AGREEMENT** (this “Agreement”), dated for purposes of identification only as of July 1, 2012 (the “Date of Agreement”), is made and entered into by and between the

CITY OF ANAHEIM, a municipal corporation and charter city (the “City”),

A
N
D

E. CUBICS LLC, a California limited liability company, d.b.a. QBICS CAREER COLLEGE (the “Vendor”).

RECITALS

- A. Among other things, the Workforce Investment Act of 1998 (hereinafter defined as the “Act”) supersedes the Job Training Partnership Act and establishes a workforce investment system which provides the framework for the delivery of workforce investment activities at the State and local levels.
- B. The purpose of Title 1 of the Act is to provide workforce investment activities that increase the employment, retention and earnings of participants in the workforce investment system (each hereinafter defined as a “Qualified Participant”), and increase occupational skill attainment by Qualified Participants, which will improve the quality of the workforce, reduce welfare dependency and enhance the productivity and competitiveness of the Nation’s economy through the workforce investment system.
- C. At the local level, the workforce investment system includes Local Workforce Investment Areas; the Governor of the State of California has designated the City of Anaheim a Local Workforce Investment Area under the Act.
- D. Title I of the Act permits certain workforce investment activities within Local Investment Areas, including employment and training activities for adults and dislocated workers, and youth activities.
- E. Through the California Employment Development Department (“EDD”), the Department of Labor of the United States (the “Department of Labor”) has awarded the City a grant (the “WIA Grant”) to fund and operate various workforce development activities (collectively, the “City’s WIA Programs”) consistent with the purposes of the Title 1 of the Act.

- F. The City desires to contract with public and private organizations, including employers, who are qualified to participate in the City's WIA Programs by providing services to Qualified Participants (each, a "Qualified Vendor").
- G. Vendor is a Qualified Vendor.
- H. The City and Vendor (each, a "Party" and jointly, the "Parties") desire to enter into this Agreement so that Vendor may receive a subgrant of the proceeds of the WIA Grant (hereinafter defined as the "Subgrant") in consideration for Vendor's participation in the City's WIA Programs and provision of services to Qualified Participants upon the request of the City.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS CONTAINED HEREIN, THE CITY AND THE VENDOR AGREE AS FOLLOWS:

Section 1. Definitions.

The following capitalized terms used in this Agreement shall have the following meanings:

"Act" means the Workforce Investment Act (29 U.S.C.A. 2801 et seq.), as amended from time to time.

"Agreement" means this Workforce Investment Act Vendor Agreement by and between the City and the Vendor.

"City" is defined in the initial paragraph of this Agreement and includes any assignee of or successor to the rights, powers and responsibilities of the City. The Workforce Development Manager of the Workforce Development Division of the City of Anaheim, or his designee, (hereinafter defined as the "City's Representative") shall represent the City in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by the City, the City's Representative is authorized to act on behalf of the City unless this Agreement specifically provides otherwise or the context should otherwise require.

"City's Representative" means the Workforce Development Manager of the City's Community Development Department.

"City's WIA Programs" is defined in Recital E hereof.

"Conditions to Disbursement" is defined in Section 2.3 hereof.

"Covenants Re: Use of Federal Funds" means those additional covenants of Vendor required due to the federal source of the Subgrant Proceeds which are attached hereto as Exhibit B and incorporated herein by this reference.

"Date of Agreement" is defined in the initial paragraph of this Agreement.

"Default" is defined in Section 7.1 hereof.

“**Department of Labor**” is defined in Recital E hereof.

“**EDD**” is defined in Recital E hereof.

“**Maximum Amount of Subgrant**” means \$100,000.00.

“**Notice to Proceed**” means a written notice from the City which (i) approves the Curriculum for Participants, if required by City, (ii) establishes the maximum number of Qualified Participants for which the Vendor may receive Subgrant Proceeds and (iii) notifies the Vendor that the Vendor may proceed to provide Vendor’s Services to a particular Qualified Participant.

“**Parties**” is defined in Recital H hereof.

“**Qualified Participants**” means, generally, persons participating in the City’s WIA Programs.

“**Qualified Vendor**” is defined in Recital F hereof.

“**Schedule of Compensation**” means the description of the terms of compensation which is set forth in the Work Plan Summary.

“**Scope of Work**” means the description of the Vendor’s Services which is set forth in the Work Plan Summary.

“**Subgrant**” is defined in Section 2.1 hereof.

“**Subgrant Proceeds**” means the proceeds of the Subgrant.

“**Term**” is defined in Section 4 hereof.

“**Term Expiration Date**” means June 30, 2014.

“**Vendor**” is defined in the initial paragraph of this Agreement. The Vendor’s Representative shall represent Vendor in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by Vendor, the Vendor’s Representative is authorized to act on behalf of Vendor unless this Agreement specifically provides otherwise or the context should otherwise require.

“**Vendor’s Representative**” means Enda Gutierrez.

“**Vendor’s Services**” means the services provided by Vendor to Qualified Participants in connection with Vendor’s participation in the City’s WIA Programs pursuant to this Agreement and includes, but is not limited to, the provision of the services set forth in the Scope of Work.

“**WIA Grant**” is defined in Recital E hereof.

“**Work Plan Summary**” means the summary attached hereto as Exhibit A and incorporated herein by this reference.

“**Workplace**” means the place where the Vendor provides Vendor’s Services to Qualified Participants.

Section 2. Subgrant.

2.1 Amount of Subgrant. Upon satisfaction of the Conditions to Disbursement, the City agrees to grant to Vendor proceeds of the WIA Grant in the amounts set forth in the Schedule of Compensation (collectively, the “Subgrant”), subject to all of the terms, covenants and conditions of this Agreement.

2.2 Maximum Amount of Subgrant. In no event shall the aggregate amount of the Subgrant Proceeds distributed to Vendor over the Term of this Agreement exceed the Maximum Amount of Subgrant.

2.3 Disbursement of Subgrant Proceeds. Upon satisfaction of the Conditions to Disbursement or written waiver thereof by the City, the City shall distribute the Subgrant Proceeds in monthly or quarterly installments, as requested by Vendor, in arrears, in order to compensate Vendor for the provision of Vendor’s Services under this Agreement. Requests for disbursements by Vendor shall be made by Vendor sending to the City, not more frequently than monthly nor less frequently than quarterly, a detailed invoice in a form specified and approved by the City.

2.4 Conditions Precedent to Disbursement. Vendor agrees further that the City shall not be obligated to make any disbursement of the Subgrant Proceeds unless and until Vendor has fulfilled all of the City’s customary conditions for disbursement of Subgrant Proceeds under the City’s WIA Programs (the “Conditions to Disbursement”). Such conditions include, for purposes of guidance and illustration, but are not limited to, the following:

- A. The City shall have received all insurance certificates required by it pursuant to and in accordance with Section 6.1 of this Agreement.
- B. The City shall have received evidence that (i) Vendor has the power to enter into this Agreement, (ii) all documents executed by Vendor pertaining to this Agreement are valid and binding obligations of Vendor, enforceable according to their terms and (iii) the officers and agents executing such documents are duly empowered and authorized to execute them on behalf of Vendor.
- C. The City shall have received copies of any and all licenses, permits, notices, and certificates required by the City pursuant to and in accordance with Section 3.6 of this Agreement.
- D. The City shall have issued Notices to Proceed for each Qualified Participant.

The City’s Representative may waive or modify in writing any of the Conditions to Disbursement of the Subgrant Proceeds.

2.5 Fiscal Limitations. The United States of America, through the Department of Labor, may in the future place programmatic or fiscal limitations on WIA Grants not presently anticipated. Accordingly, the City reserves the right to revise this Agreement in order to take

account of such actions. In the event of funding reduction, the City may reduce the budget for this Agreement as a whole or may limit the rate by which Vendor receives the Subgrant for providing Vendor's Services to Qualified Participants. If the Department of Labor directs the City to implement a reduction in funding, the City's Representative may act for the City in implementing and effecting such a reduction and in revising the Agreement for such purpose. Where the City's Representative has reasonable grounds to question the fiscal accountability, financial soundness, or compliance with this Agreement of Vendor, the City's Representative may act for the City in suspending the operation of this Agreement for up to sixty (60) days upon three (3) days notice to Vendor of the City's intention to so act, pending an audit or other resolution of such questions.

2.6 Programs Utilizing Multiple Funding Sources. For programs in which there are sources of funds in addition to WIA Grant funds, Vendor shall provide proof of such funding. The City shall not pay for any services provided by Vendor which are funded by other sources. All restrictions and/or requirements provided for in this Agreement relative to accounting, budgeting and reporting apply to the total program regardless of funding sources.

2.7 Use of Federal Funds. Vendor acknowledges and agrees that the Subgrant is funded from WIA Grant funds allocated to the City by the United States of America through the Department of Labor. Accordingly, Vendor hereby provides to the City those covenants set forth in the Covenants Re: Use of Federal Funds.

Section 3. Vendor's Services.

3.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, Vendor shall provide the Vendor's Services, as authorized by the City's Representative. Vendor represents and warrants that Vendor's Services to be provided hereunder shall be performed in a competent, professional and satisfactory manner in accordance with the City's WIA Programs.

3.2 Notices to Proceed. Vendor acknowledges and agrees that City shall request that Vendor provide the Vendor's Services on an "as requested" basis and that City does not guaranty a minimum number of Qualified Participants for whom Vendor's Services shall be requested and required under this Agreement. Vendor acknowledges and agrees that Vendor shall not commence to provide Vendor's Services to a particular Qualified Participant hereunder unless and until Vendor receives a Notice to Proceed from the City authorizing the provision of Vendor's Services to that particular Qualified Participant. Vendor further acknowledges and agrees that this Agreement and any request for the provision of services hereunder is nonexclusive and that the City may enter into similar agreements with other entities for the provision of similar services.

3.3 Time for Performance. Time is of the essence in the performance of this Agreement. Vendor shall perform and complete all of Vendor's Services in a timely and expeditious manner.

Vendor shall not be responsible for delays caused by circumstances beyond its reasonable control, provided that Vendor has delivered to the City written notice of the cause of any such delay within ten (10) days of the occurrence of such cause.

3.4 Vendor's Proposal. The Scope of Services shall include the Vendor's proposal or bid, if any, which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

3.5 Compliance with Law. Vendor's Services shall be provided in accordance with all ordinances, resolutions, statutes, rules, regulations and laws of the City and any Federal, State or local governmental agency of competent jurisdiction.

3.6 Licenses, Permits, Fees and Assessments. Vendor shall obtain, at Vendor's sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of Vendor's Services. Vendor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and which arise from or are necessary for the performance of the services required by this Agreement.

3.7 Nondiscrimination. Vendor agrees not to discriminate against any person or class of persons by reason of sex, color, race, creed, religion, marital status, handicap, ancestry or national origin in its provision of Vendor's Services. To the extent this Agreement provides that Vendor offer accommodations or services to the public, such accommodations or services shall be offered by Vendor to the public on fair and reasonable terms.

3.8 Familiarity with Work. By executing this Agreement, Vendor represents and warrants that Vendor (i) has thoroughly investigated and considered Vendor's Services to be performed, (ii) has carefully considered how Vendor's Services should be provided and (iii) fully understands the facilities, difficulties and restrictions attending the provision of Vendor's Services under this Agreement. Should the Vendor discover any latent or unknown conditions materially differing from those inherent in the provision of Vendor's Services or as represented by the City, Vendor shall immediately inform the City of such fact and shall not proceed except at Vendor's risk until written instructions are received from the City.

3.9 Inspection. The City, EDD and the Department of Labor and their agents and representatives shall have the right at any reasonable time to observe the provision of Vendor's Services. The City is under no duty to supervise the provision of Vendor's Services. Any inspection or examination by the City is for the sole purpose of protecting and preserving the City's rights under this Agreement. No default of Vendor shall be waived by any inspection by the City. In no event shall any inspection by the City be a representation that there has been or will be compliance with this Agreement or that Vendor is in compliance with any federal, state and local laws, ordinances, regulations and directives applicable to the performance of this Agreement or the provision of Vendor's Services. Vendor shall make or cause to be made such other independent inspections as Vendor may desire for Vendor's own protection.

Section 4. Term. This Agreement shall be for a term (the "Term") commencing on the Date of Agreement and terminating on the Term Expiration Date, subject to earlier termination as provided in Subsection 6.1.4 or Section 7 hereof.

Section 5. Coordination of Services.

5.1 City's Representative. The City's Representative shall represent the City in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by the City, the City's Representative is authorized to act unless this Agreement specifically provides otherwise or the context should otherwise require.

5.2 Vendor's Representative. Vendor's Representative shall represent the Vendor in all matters pertaining to this Agreement. Vendor's Representative is authorized to act on Vendor's behalf with respect to the services and work to be provided hereunder and make all decisions in connection therewith.

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principal are a substantial inducement for the City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the Term of this Agreement for directing all activities of Vendor and devoting sufficient time to personally supervise the provision of Vendor's Services hereunder. The foregoing principal may not be changed by Vendor and no other personnel may be assigned to supervise the Vendor's Services to be provided hereunder without the express written consent of the City.

5.3 Prohibition Against Subcontracting and Assignments. Neither the whole nor any interest in, nor any of the rights or privileges granted under this Agreement shall be assignable or transferable or encumbered in any way without the prior written consent of City. Any such purported assignment, transfer, encumbrance, pledge, subuse, or permission given without such consent shall be void as to City. This is a personal services contract and the Vendor was chosen on the basis of characteristics unique to the Vendor. City shall have the right to unreasonably or arbitrarily withhold its consent to any such assignment, transfer, encumbrance, pledge, subuse, or permission.

5.4 Independent Contractor. Vendor and any agent or employee of Vendor shall act in an independent capacity and not as officers or employees of City. City assumes no liability for Vendor's actions and performance, nor assumes responsibility for taxes, bonds, payments, or other commitments, implied, or explicit, by or for Vendor. Vendor shall not have authority to act as an agent on behalf of City unless specifically authorized to do so in writing. Vendor acknowledges that it is aware that because it is an independent contractor, City is making no deduction from any amount paid to Vendor and is not contributing to any fund on its behalf. Vendor disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

As respects all acts or omissions of Vendor relating to Vendor's responsibility for taxes, bonds, payments, or other commitments, implied, or explicit, by or for Vendor, the Vendor agrees to indemnify, defend (at the City's option), and hold harmless the City, its officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with the Vendor's performance or failure to perform under this Section.

Section 6. Insurance and Indemnification.

6.1 Insurance. Without limiting City's right to indemnification, it is agreed that Vendor shall secure prior to commencing any activities under this Agreement, and maintain during the Term of this Agreement, insurance coverage as set forth in this Section 6.1.

6.1.1 Required Insurance Coverage. Vendor shall secure and maintain the following insurance coverage:

- (a) Workers' Compensation Insurance as required by California statutes; and
- (b) Comprehensive General Liability Insurance, or Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, Broad-Form Property Damage, Independent Contractor's Liability and Fire Damage Legal Liability, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form.

The City's Representative, with the consent of the City's Risk Manager, is hereby authorized to reduce the requirements set forth above in the event he determines that such reduction is in City's best interest.

6.1.2 Required Clauses in Policies. Each policy of general liability insurance required by this Agreement shall contain the following clauses:

“This insurance shall not be canceled or allowed to lapse without at least ten (10) days' prior written notice to the City Clerk of the City of Anaheim, 200 S. Anaheim Boulevard, Anaheim, CA 92805.”

“It is agreed that any insurance maintained by the City of Anaheim shall apply in excess of and not contribute with insurance provided by this policy.”

“The City of Anaheim, its officials, agents, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured, performed under contract with the City of Anaheim.”

Vendor hereby agrees to waive subrogation which any insurer of the Vendor may acquire from the Vendor by virtue of the payment of any loss. If requested by City, Vendor agrees to obtain and deliver to City an endorsement from Vendor's general liability insurance insurer to effect this waiver of subrogation.

6.1.3 Required Certificates and Endorsements. Prior to commencement of any work under this Agreement, the Vendor shall deliver to City (i) insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above and (ii) endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Such endorsements shall be signed

by an authorized representative of the insurance company and shall include the signator's company affiliation and title. Should it be deemed necessary by City, it shall be the Vendor's responsibility to see that City receives documentation, acceptable to City, which sustains that the individual signing such endorsements is indeed authorized to do so by the insurance company. Also, City reserves the right at any time to demand, and to receive within a reasonable time period, certified copies of any insurance policies required under this Agreement, including endorsements effecting the coverage required by these specifications.

6.1.4 Remedies for Defaults Re: Insurance. In addition to any other remedies City may have if the Vendor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

- (a) Obtain such insurance and deduct and retain the amount of the premium for such insurance from any sums due under this Agreement;
- (b) Order the Vendor to stop work under this Agreement and/or withhold any payment(s) which become due to the Vendor hereunder until the Vendor demonstrates compliance with the requirements hereof;
- (c) Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for the Vendor's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which the Vendor may be held responsible for payment of damages to persons or property resulting from the Vendor's or its subcontractor's performance of Vendor's Services under this Agreement.

6.2 Indemnification. As respects acts, errors or omissions in the performance of Vendor's Services under this Agreement, the Vendor agrees to indemnify and hold harmless the City, its officers, agents, employees, representatives and volunteers from and against any and all claims, demands, defense costs, liability or consequential damages of any kind or nature arising directly out of the Vendor's acts, errors or omissions in the performance of Vendor's Services under the terms of this Agreement.

Section 7. Enforcement of Agreement.

7.1 Events of Default. For purposes of this Section 7, the word "Default" shall mean the failure of Vendor to perform any of Vendor's duties or obligations or the breach by Vendor of any of the terms and conditions set forth in this Agreement. In addition, Vendor shall be deemed to be in Default upon Vendor's (i) application for, consent to, or suffering of, the appointment of a receiver, trustee or liquidator for all or a substantial portion of its assets, (ii) making a general assignment for the benefit of creditors, (iii) being adjudged bankrupt, (iv) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing) or (v) suffering or permitting to continue

unstayed and in effect for fifteen (15) consecutive days any attachment, levy, execution or seizure of all or a substantial portion of Vendor's assets or of Vendor's interests hereunder.

City shall not be deemed to be in Default in the performance of any obligation required to be performed by City hereunder unless and until City has failed to perform such obligation for a period of thirty (30) days after receipt of written notice from Vendor specifying in reasonable detail the nature and extent of any such failure; provided, however, that if the nature of City's obligation is such that more than thirty (30) days are required for its performance, then City shall not be deemed to be in Default if City shall commence to cure such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

7.2 Immediate Termination for Vendor's Default. In the event of any Default by Vendor, City may immediately terminate this Agreement. Such termination shall be effective immediately upon receipt by Vendor of written notice from City. In such event, Vendor shall have no further rights hereunder; City shall have all other rights and remedies as provided by law.

7.3 Termination Without Cause. Either City or Vendor may terminate this Agreement at any time without the necessity of cause or Default by the other Party by giving thirty (30) days notice in writing to the other Party. In such event, the Parties shall have no further rights hereunder, except that Vendor shall be paid for Vendor's Services rendered and completed prior to such termination.

7.4 Attorneys' Fees. City and Vendor agree that in the event of litigation to enforce this Agreement or terms, provisions and conditions contained herein, to terminate this Agreement, or to collect damages for a Default hereunder, the prevailing party shall be entitled to all costs and expenses, including reasonable attorneys' fees, incurred in connection with such litigation.

Section 8. Use and Ownership of Documents and Data.

8.1 Data to be Furnished by City. City shall furnish to Vendor such documents and materials as may be relevant and pertinent to the provision of services hereunder as City may possess or acquire.

8.2 Ownership of Documents. All documents and materials furnished by the City to Vendor pursuant to Section 8.1 hereof shall remain the property of the City and shall be returned to the City upon termination of this Agreement. All documents and materials prepared by Vendor hereunder shall become the property of the City at the time of payment to Vendor of all fees and expenses for their preparation, and shall be delivered to the City by Vendor at the request of the City. The documents and materials prepared by Vendor hereunder shall not be used by the City or others, except for the purpose for which they were intended. The City agrees not to associate Vendor's name with any documents or materials not prepared by Vendor.

Section 9. Records, Reports and Audits.

9.1 Records and Reports; Retention of Records. Vendor shall prepare and submit financial, program progress, monitoring, evaluation, personnel, property and financial records

and other reports as required by the City and in the format acceptable to the City to assure proper accounting of all WIA Grant funds. Vendor shall furnish such information which, in the judgment of the City's Representative, may be relevant to questions of compliance with contractual conditions hereunder or granting agency directives, or with the effectiveness, legality and goals of the City's WIA Programs. Vendor shall retain all records and reports required under this Section for a period of three (3) years after the termination of this Agreement.

9.2 Monitoring. The City may conduct periodic program monitoring reviews. These reviews will focus on the extent to which the planned program has been implemented and measurable goals achieved, effectiveness of program management, and impact of the program. Authorized representatives of the City, EDD and the Department of Labor shall have the right of access to all activities and facilities operated by Vendor in connection with this Agreement. Facilities include all files, records, and other documents related to the performance of this Agreement. Activities include attendance at all pertinent staff, board of directors, advisory committee, and advisory board meetings and inspection by the City, EDD and the Department of Labor. Vendor shall ensure that its employees and board members furnish such information as, in the judgment of the City, EDD and the Department of Labor, may be relevant to the question of compliance with contractual conditions and Department of Labor directives, or the effectiveness, legality, and achievements of the City's WIA Programs.

Section 10. Miscellaneous Provisions.

10.1 Waiver. Inaction by City or Vendor with respect to a Default hereunder shall not be deemed to be a waiver of such Default. The waiver by either City or Vendor of any Default hereunder shall not be deemed to be a waiver of any subsequent Default.

10.2 Notices. All notices, demands or other writings to be made, given or sent hereunder, or which may be so given or made or sent by either City or Vendor to the other shall be deemed to have been given when in writing and personally delivered or if mailed on the third (3rd) day after being deposited in the United States mail, certified or registered, postage prepaid, and addressed to the respective Parties at the following addresses:

If to City: City Clerk
City of Anaheim
200 S. Anaheim Boulevard, 2nd Floor
Anaheim, California 92805
FAX No. (714) 765-4105

With copies to: Ruben Aceves – Workforce Development Manager
Community Development Department
City of Anaheim
290 S. Anaheim Boulevard, Suite 102
Anaheim, California 92805
FAX No. (714) 765-4363

Theodore J. Reynolds, Assistant City Attorney
City of Anaheim
200 S. Anaheim Boulevard, 3rd Floor
Anaheim, California 92805
FAX No. (714) 765-4630

To Vendor: E. Cubics, a California limited liability company, d.b.a.
QBICS Career College
1125 East 17th Street, Suite E-210
Santa Ana, CA 92701
Attention: Chief Executive Officer
FAX No. (714) 550-1774

10.3 Relationship of Parties. Nothing contained herein shall be deemed or construed by the Parties, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that Vendor is and will be at all times an independent contractor pursuant to this Agreement and shall not, in any way, be considered to be an officer, agent or employee of the City.

10.4 No Third Party Rights. The Parties intend that no rights nor remedies be granted to any third party as a beneficiary of this Agreement or of any covenant, duty, obligation or undertaking established herein.

10.5 Non-Liability of Members, Officials and Employees of the City. No member, official or employee of the City shall be personally liable to Vendor, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to Vendor or Vendor's successors, or on any obligation under the terms of this Agreement. Vendor hereby waives and releases any claim Vendor may have against the members, officials or employees of the City with respect to any Default or breach by City or for any amount which may become due to Vendor or Vendor's successors, or any obligations under the terms of this Agreement. Vendor makes such release with the full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

10.6 Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10.7 Time of the Essence. Time is hereby expressly declared to be the essence of this Agreement and of each and every term, covenant and condition hereof which relates to a date or a period of time.

10.8 Remedies Cumulative. The remedies given to City and Vendor herein shall be cumulative and are given without impairing any other rights given City or Vendor by statute or law now existing or hereafter enacted and the exercise on any one (1) remedy by City or Vendor shall not exclude the exercise of any other remedy.

10.9 Effect of Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of its terms and provisions to persons and circumstances other than those to which it has been held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10.10 Successors and Assigns. This Agreement and the covenants and conditions contained herein shall be binding upon and inure to the benefit of and shall apply to the successors and assigns of City and to the permitted successors and assigns of Vendor, and all references to “City” or “Vendor” shall be deemed to refer to and include all permitted successors and assigns of such Party.

10.11 Entire Agreement. This Agreement and the exhibits hereto contain the entire agreement of the City and the Vendor with respect to the matters covered hereby, and no agreement, statement or promise made by either City or Vendor which is not contained herein, shall be valid or binding. No prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended, modified or added except by an agreement in writing signed by City and Vendor.

10.12 Authority. Each individual executing this Agreement on behalf of a corporation, nonprofit corporation, partnership or other entity or organization, represents and warrants the he or she is duly authorized to execute and deliver this Agreement on behalf of such entity or organization and that this Agreement is binding upon the same in accordance with its terms. Vendor shall, at City’s request, deliver a certified copy of it governing board’s resolution or certificate authorizing or evidencing such execution.

10.13 Conflicts of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affect his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

10.14 Time for Acceptance of Agreement by City. This Agreement, when executed by Vendor and delivered to City, must be authorized, executed and delivered by the City on or before forty-five (45) days after the execution and delivery by Vendor or this Agreement shall be void, except to the extent that Vendor and City shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

IN WITNESS WHEREOF, the City and the Vendor have executed this Agreement on the respective dates set forth below.

“CITY”

CITY OF ANAHEIM,
a municipal corporation and charter city

Dated: _____

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

CRISTINA L. TALLEY, CITY ATTORNEY

By: _____
Theodore J. Reynolds
Assistant City Attorney

“VENDOR”

**E. CUBICS LLC, a California limited liability
company, d.b.a. QBICS CAREER COLLEGE**

Dated: _____

By: _____
Ehky Gutierrez
Chief Executive Officer

89624

State of California)
) ss.
County of _____)

On _____, _____, before me, _____
(name, title of officer, e.g., "Jane Doe, Notary Public")

personally appeared _____
(name(s) of signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity/ies, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature of Notary)

Capacity claimed by signer: (This section is OPTIONAL.)

- Individual
- Corporate Officer(s):
- Partner(s):
 - General
 - Limited
- Attorney-in-fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing: _____
(name of person(s) or entity(ies))

Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

THIS CERTIFICATE Title or Type of Document: _____
MUST BE ATTACHED TO _____
THE DOCUMENT Number of Pages: _____ Date of Document: _____
DESCRIBED AT RIGHT: Signer(s) Other than Named Above: _____

EXHIBIT “A”

WORK PLAN SUMMARY

(Behind this sheet)

QBICS CAREER COLLEGE Phone: 714-550-1052
 1125 E. 17TH STREET, SUITE E-210, SANTA ANA, CA 92701

Course Name	Course Description	Total Hours	Total Cost	Tuition	Fees	Other Expenses
NETWORK PLUS (NET +)	THIS COURSE IS DESIGNED TO PREPARE STUDENTS FOR ENTRY LEVEL COMPUTER NETWORKING.	720	7500	6830	75	595
COMPUTER ELECTRONIC TECH (CET/A+)	THIS PROGRAM IS DESIGNED TO PREPARE STUDENTS FOR TROUBLESHOOTING, REPAIRING AND MAINTAINING COMPUTERS.	720	7500	6830	75	595
COMPUTERIZED OFFICE OCCUPATION(COO)	THIS COURSE IS DESIGNED TO PREPARE STUDENTS FOR AN OFFICE ADMINISTRATION POSITION. EMPHASIS IS PLACED ON CURRENT SOFTWARE INCLUDING ACCOUNTING, TYPING, WORD PROCESSING, DATABASE, AND VISUAL PRESENTATIONS.	720	7500	7200	75	225
MEDICAL ASSISTANT/CPT/EMR	THIS COURSE IS DESIGNED TO PREPARE STUDENTS FOR THE MEDICAL ASSISTANT FIELD. EMPHASIS ON CLINICAL LABORATORIAL AND ADMINISTRATIVE PROCEDURES.	720	9650	8490	75	1085
ELECTRONIC MEDICAL RECORDS	THIS COURSE IS DESIGNED TO PREPARE STUDENTS IN THE MEDICAL OFFICE ENVIRONMENT BY USING EMR SOFTWARE AND OFFICE APPLICATIONS.	720	8500	8200	75	225
CERTIFIED PHLEBOTOMY TECHNICIAN 1	TO TRAIN STUDENTS TO COLLECT BLOOD SPECIMENS BY VENIPUNCTURE AND BY MICRO COLLECTION TECHNIQUES. THIS COURSE WILL PREPARE STUDENTS FOR THE PHLEBOTOMY CERTIFICATION EXAM.	96	2500	1965	75	460
NURSE ASSISTANT / HOME HEALTH AIDE	THIS COURSE IS DESIGNED TO PREPARE STUDENTS FOR ENTRY LEVEL POSITION AS NURSES AIDE.	540	5000	4600	75	325
NURSE TECHNICIAN AIDE	THIS COURSE WILL PREPARE STUDENTS TO OBTAIN THE CERTIFIED NURSE ASSISTANT LICENSE, CERTIFIED PHLEBOTOMY LICENSE, MENTAL HEALTH WORKER AIDE CERTIFICATION.	720	8700	7370	75	1255

EXHIBIT “B”

COVENANTS RE: USE OF FEDERAL FUNDS

Vendor acknowledges and agrees that the Subgrant is funded from WIA Grant funds allocated to the City by the Department of Labor of the United States of America. Accordingly, Vendor covenants and agrees as follows:

Section 1. Compliance With Law. Vendor hereby covenants and agrees that it has complied and will continue to comply with those provisions of the Workforce Investment Act of 1998 establishing the WIA Grant program (codified at 29 U.S.C.A. 2801 et seq.) (the “Act”), and all applicable Federal, state and local laws, ordinances, regulations, policies, guidelines, and requirements as they relate to acceptance and use of Federal funds for this federally-assisted program. This Agreement is subject to all such laws, ordinances, regulations, policies, and guidelines, including, without limitation, the Act; 20 CFR Part 645; and applicable U.S. Office of Management and Budget Circulars, including, without limitation, A-102 and A-133.

Section 2. Non-Discrimination and Equal Opportunity. Vendor shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, age, national origin, or ancestry. Vendor shall comply with the following:

- A. The requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as amended, and all regulations applicable thereto, and the provisions of WIA Section 188 and compliance with Equal Employment Opportunity provisions in Executive Order (E.O.) 11246, as amended by E.O. 11375 and supplemented by the requirements of 41 C.F.R. Part 60.
- B. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 C.F.R. Part 146.
- C. The prohibitions against discrimination against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 C.F.R. Part 8.
- D. The prohibitions against discrimination against handicapped persons under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and implementing regulations (28 C.F.R. Parts 35-36).
- E. The prohibitions against discrimination set forth in the regulations codified at 29 CFR Parts 31, 32 and 34.

Section 3. Uniform Fiscal and Administrative Requirements. Vendor shall comply with the fiscal and administrative requirements set forth at 29 CFR Parts 95 and 97, O.M.B. Circular A-110 and Section 645.230(a) of 20 CFR Part 645.

Section 4. Audit Requirements. Vendor shall comply with the audit requirements set forth at 29 CFR Parts 95 and 97.

Section 5. Allowable Costs/Cost Principles. Vendor shall comply with the allowable cost requirements set forth (i) at 29 CFR Parts 95 and 97, (ii) in O.M.B Circulars A-21, A-87, A-110, A-122 and A-133 and (ii) in the Federal Acquisition Regulations at 45 CFR Part 74 and 48 CFR Part 31.

Section 6. Government-wide Debarment and Suspension, and Government-wide Drug-free Workplace Requirements. Vendor shall comply with the government-wide requirements for debarment and suspension and drug-free workplaces set forth at 29 CFR Part 98.

Section 7. Restrictions on Lobbying. Vendor shall comply with the restrictions on lobbying set forth at 29 CFR Part 93.

Section 8. Nepotism. In addition to the conflict of interest requirements in OMB Circular A-110 and to the requirements at 29 CFR 95.42 and 29 CFR 97.36(b)(3) which address codes of conduct and conflict of interest issues related to employees, no person may be placed in an employment activity if a member of that person's immediate family is engaged in an administrative capacity for the employing agency.

Section 9. Religious and Political Activities. Vendor agrees that Subgrant Proceeds shall be used exclusively for the Services required under this Agreement, and that no funds made available under this Agreement shall be used to promote religious or political activities. Further, Vendor agrees that it will not perform, nor permit to be performed, any religious or political activities in connection with the performance of this Agreement.

Section 10. No Disability. Vendor certifies and agrees that it is under no contractual or other disability which would prevent it from complying with all pertinent laws and regulations.

Section 11. Privacy. Vendor agrees and shall ensure that no information about or obtained from any person receiving services hereunder shall be voluntarily disclosed in any form identifiable with such person without first obtaining the written consent of such person.

Section 12. Patent Rights. Vendor shall comply with the notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under this Agreement as set forth at 29 CFR 97.36 (i) (8).

Section 13. Clean Air Act; EPA Regulations. Vendor shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act set forth at 42 U.S.C. 1857 (h), Section 508 of the Clean Air Act set forth at 33 U.S.C. 1968, Executive Order 11738 and the Environmental Protection Agency regulations set forth at 40 CFR Part 15.

Section 14. Energy Efficiency. Vendor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act set forth at Public Law 94-163, 89 Statutes 871.

Section 15 Intellectual Property. Vendor acknowledges and agrees that pursuant to 29 CFR Section 97.34, the Federal Government reserves a royalty-free, nonexclusive, and irrevocable

license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- (A) the copyright in any work developed under the Subgrant or this Agreement;
- (B) any rights of copyright to which Vendor purchases ownership with Subgrant Proceeds;
- (C) the patent for any invention developed under the Subgrant or this Agreement; and
- (D) any rights in any patent to which Vendor purchases ownership with Subgrant Proceeds.