

**TRAINEE/EMPLOYER PARTICIPATION AGREEMENT
EFFICIENCY FIRST TRAINING PROGRAM**

MEMORANDUM OF UNDERSTANDING made as of _____, 20__ by and between **Efficiency First**, with offices at 167 Mission Street, 2nd Floor, San Francisco, CA 94115 (“**Contractor**”) and _____ (“**Participating Employer**”) with offices at _____, (collectively, the “**Parties**”).

The purpose of this Agreement is to develop an understanding of the requirements for fulfilling the terms of a Contract with the CA Employment Training Panel. By signing this agreement, I acknowledge that I have reviewed the **Participating Employer Guidelines** for the Efficiency First Training Program and agree to abide by the terms contained therein.

A. RECITALS:

1. Recognizing that Efficiency First applied for and was awarded funding from the California Employment Training Panel on behalf of its California members;
2. Recognizing that Efficiency First is obligated to fulfill the terms of the ETP contract;
3. Recognizing that Efficiency First undertakes all risk for purposes of fulfilling the terms of the ETP contract;
4. Recognizing that Participating Employer expressed intent to enroll eligible employees in classes scheduled for purposes of fulfilling the terms of said contract; and
5. Recognizing that the funding awarded under the contract is directly related to the intentions expressed by Participating Employer during the Application process, the Parties to the agreement herein agree to work together to ensure the successful performance on the contract referred to herein.

B. STATEMENT OF SERVICES TO BE PERFORMED:

1. The Parties shall each, from time to time, cooperate in good faith in submitting information for fulfillment of the contract terms.
2. Contractor agrees to submit all requisite information provided by Employer Participant and additional subcontractors to ETP in order to facilitate reimbursement to Employer Participant. Contractor further agrees to keep any confidential or sensitive information with respect to wages, social security numbers and any other information provided for submission to ETP private and confidential.
3. Employer Participant agrees to enroll all intended trainees into the selected programs for purposes of fulfilling the terms of the ETP contract entered into by Contractor with ETP in the manner prescribed by Contractor. Employer Participant agrees to submit all requisite information requested by Efficiency First for proper submission to the ETP. Employer Participant further agrees to furnish all requested information in good faith and in a timely and professional manner.
4. This Agreement does not constitute a Partnership Agreement, and none of the Parties shall be deemed an agent or partner of any other or have authority to act for or bind any other party hereto except as provided for under this Agreement.

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C. ADDITIONAL PROVISIONS:

1. Parties: The Employment Training Panel (ETP) and the California Energy Commission (CEC) are not party to this Agreement. ETP and CEC are not obligated in any manner for any liability that may arise out of this Agreement. No third party relationship is intended or created with ETP or CEC under this Agreement.
2. Conflicting Terms: In the event of any conflict or inconsistency between the terms of this Agreement and the ETP Agreement, the latter shall govern and prevail.
3. Anti-Discrimination: The parties to this Agreement understand that its respective employees are protected by state and federal law from discharge, demotion or other form of discrimination for disclosures they make based on a reasonable belief that there is evidence of: (1) gross mismanagement or waste of federal funds; (2) a substantial and specific danger to public health or safety related to the use of federal funds; (3) an abuse of authority related to funding under this Agreement; or (4) a violation of state or federal law or policy related to funding under this Agreement. Contractor agrees to post notice of the protections for “whistle blowing” as required by ARRA Section 1553.
4. False Claims Act: The parties to this Agreement will promptly notify ETP if it receives any credible evidence that a principal, employee, agent, subcontractor or other person has submitted a false claim; or has committed a violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar financial misconduct in connection with funding under this Agreement.
5. Prohibited Use: The parties to this Agreement will not use ARRA funds for any casino or gambling establishment, aquarium, zoo, golf course or swimming pool.
6. Audit Rights: The parties agree that ETP has the right, during normal business hours, to examine or audit any and all records, books, papers and documents related to the delivery of services under this Agreement to the extent ETP deems necessary. They agree that this same right extends to the United States Comptroller General or United States Inspector General or their representative(s); and the State of California Office of Inspector General, or the California Energy Commission.
7. Access Rights: The parties agree that ETP has the right, during normal business hours, to freely observe and monitor the delivery of services under this Agreement. They agree that this same right extends to the United States Comptroller General or United States Inspector General or their representative(s); and the State of California Office of Inspector General, or the California Energy Commission.
8. Records Retention: The parties agree to maintain all records and other writings that pertain to the delivery of services under this Agreement for a period of no less than 4 years from termination or 3 years from Fiscal Closeout, whichever is later.
9. Governing Law/Forum: This Agreement shall be governed by the laws of the State of California, in general; and by the American Recovery and Reinvestment Act (ARRA) as pertinent to particular federal funding requirements. If ETP is named as a party in litigation, arbitration or other proceedings in connection with this Agreement, the exclusive venue and place of jurisdiction will be the County of Sacramento in the State of California.
10. Federal Reporting: The parties will cooperate to the extent necessary to enroll all trainees in the form and manner specified by ETP, for purposes of federal reporting requirements.
11. ARRA Amendments: The parties acknowledge that provisions included in this Agreement are subject to change, in regard to accounting or reporting the use of funds received under ARRA. The parties agree to

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amend this Agreement as necessary to comply with any such changes in federal or state statute, regulation or policy.

12. Segregated Accounting: The parties agree that all funds received under this Agreement will be maintained in a separate financial and accounting system as necessary to segregate, track and maintain these funds apart from other revenue streams or funding sources. If necessary, the parties will obtain a Dun & Bradstreet Universal Numbering System (DUNS) number, available at www.dnb.com/us/.

D. ATTORNEYS' FEES AND GOVERNING LAW:

1. In any action or proceeding arising out of, or to interpret or construe or enforce this Agreement, the prevailing party will be entitled to recover from the other party its costs, expenses and reasonable attorneys fees incurred in connection with such action or proceeding and in enforcing any judgment or order obtained therein.
2. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of California applicable to contracts made wholly within the State of California and without reference to its principles of conflicts of law. The Applicants agree that any action or proceeding arising out of, or to interpret or construe this Agreement or to enforce this Agreement, shall be brought exclusively and only in the state or federal courts located in the County of Sacramento, State of California having jurisdiction. The Applicants expressly consent to the exclusive jurisdiction, personal jurisdiction and venue of such courts for such all such purposes. The Applicants expressly waive any and all defenses and objections to personal jurisdiction, venue and forum non conveniens of such courts.

E. ASSIGNMENT: This Agreement may not be assigned in whole or in part by Lead Applicant or Employer Participant and any assignment or attempted assignment by Lead Applicant shall be of no force and effect, null and void ab initio and not binding on Contractor. Contractor may assign this Agreement in whole or in part, at any time, for any reason or no reason.

F. ENTIRE AGREEMENT: This Agreement supersedes any and all prior agreements, contracts and understandings, oral or written, with respect to the subject matter of this Agreement. This Agreement may not be modified, amended, altered or changed except in a writing signed by all parties.

G. FULLY EXECUTED FACSIMILE COPY IS SAME AS ORIGINAL: A fully executed facsimile copy of this Agreement shall have the same force and effect as a fully executed original, and shall be deemed and considered an original for all purposes.

In Witness Whereof, the Applicants have executed this Agreement effective as of the date and year written above.

Signed,

Efficiency First, Contractor



By: Jared Asch
Title: National Director

Employer Participant



By:
Title: