

FOR INTERNAL USE ONLY

Yellow = areas for customization by contract.

STATE COLLEGE WORKFORCE ENHANCEMENT PROJECT
Project Title:

CONTRACT NUMBER:

The parties to this contract are the State of North Dakota, acting through its Department of Commerce, (STATE), and **State College**. (CONTRACTOR)

1. SCOPE OF SERVICE

This contract incorporates the **State College** Workforce Enhancement Grant application dated _____, as well as modifications to the application submitted prior to Workforce Enhancement Council review. This contract incorporates requirements of the Workforce Enhancement Grant Procedures Guide, version dated _____

Project is to:

Report Schedule

Reports will be submitted as required in the Workforce Enhancement Grant Procedures Guide
Performance Reporting
Progress Narrative
Expenditure Report/Request for Funds

2. TERM OF CONTRACT

The term of this contract is for a period of approximately _____ months, commencing on the _____ day of _____, 201_ and terminating on the _____ day of _____.

3. COMPENSATION

STATE will provide cost reimbursement for allowable costs incurred by the CONTRACTOR under this contract up to a fixed amount of **\$00,000**. Reimbursement will not exceed allowable dollar-for-dollar match received to date.

**Workforce Enhancement Grant Funds:
Grant Funds Requested**

Equipment Breakout	Cost
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Equipment Item	\$
Equipment Item	\$
Curriculum Development	\$
Trainee Recruitment Costs	\$
Instructor Training Breakout	
Training Item	\$
Training Item	\$
Total Funds Requested	\$

Match Description	
Equipment Breakout	Match Value
Equipment Item – donation or discount	\$
Equipment Item – donation or discount	\$
In-Kind Services Breakout	
In-kind description	\$
In-kind description	\$
Cash – Business Providing Donation	\$
Total Match	\$

4. TERMINATION OF CONTRACT

- A. **Termination without cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.
- B. **Termination for lack of funding or authority.** The STATE may terminate this contract effective upon delivery of written notice to the CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:
 - 1. If funding from state or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
 - 2. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.

3. If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

C. **Termination for cause.** The STATE by written notice of default to the CONTRACTOR may terminate the whole or any part of this contract:

1. If the CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by the STATE; or
2. If the CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.
3. The rights and remedies of the STATE provided in the above clause related to defaults by the CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

5. **FORCE MAJEURE**

CONTRACTOR shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond the Contractor's reasonable control and the CONTRACTOR gives notice to the STATE immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

6. **RENEWAL**

This contract will not automatically renew.

7. **MERGER AND MODIFICATION**

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties. Any unexpended funds remaining at the end of the contract period will be recovered by the State through issuance of a Unilateral Contract Modification.

8. **SEVERABILITY**

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and, if

possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

9. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without the State's express written consent. However, the CONTRACTOR may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR has no authority to contract for or incur obligations on behalf of the STATE.

10. NOTICE

All notices or other communications required under this contract shall be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

- North Dakota Department of Commerce, PO Box 2057, Bismarck, ND 58502-2057
- _____ State College, Address

11. APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

12. SPOLIATION – NOTICE OF POTENTIAL CLAIMS

CONTRACTOR shall promptly notify STATE of all potential claims which arise or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the STATE the opportunity to review and inspect the evidence, including the scene of an accident.

13. INDEMNITY

The STATE and CONTRACTOR each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

14. **INSURANCE**

Contractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverage's:

- A. Commercial general liability, including premises or operations, contractual, and products or completed operations coverage's (if applicable), with minimum liability limits of \$250,000 per person and \$500,000 per occurrence. _____ State College is insured under North Dakota OMB Risk Management.
- B. Workers compensation coverage meeting all statutory requirements.

The insurance coverage's listed above must meet the following additional requirements:

- A. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR. The amount of any deductible or self-retention is subject to approval by the STATE.
- B. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- C. The insurance required in this section, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned STATE representative.
- D. The CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement.
- E. Failure to provide insurance as required in this agreement is a material breach of contract entitling the STATE to terminate this agreement immediately.

15. **ATTORNEY FEES**

In the event a lawsuit is instituted by the STATE to obtain performance due of any kind under this contract, and the STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

16. **ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

The STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to

enforce their rights and remedies in judicial proceedings. The STATE does not waive any right to a jury trial.

17. CONFIDENTIALITY

CONTRACTOR agrees not to use or disclose any information it receives from the STATE under this contract that the STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by the STATE. The STATE agrees not to disclose any information it receives from CONTRACTOR that the CONTRACTOR has previously identified as confidential and which the STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

18. COMPLIANCE WITH PUBLIC RECORDS LAW

CONTRACTOR understands that, except for disclosures prohibited in the provision entitled "Confidentiality," the STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records which are obtained or generated by the CONTRACTOR under this contract, except for records that are confidential under the provision entitled "Confidentiality," may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact the STATE immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

19. WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment or materials created or purchased under this contract belong to the STATE and must be delivered to STATE at State's request upon termination of this contract. CONTRACTOR agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to STATE all rights and interests CONTRACTOR may have in the materials it prepares under this contract, including any right to derivative use of the material. CONTRACTOR shall execute all necessary documents to enable STATE to protect its rights under this section. Notwithstanding the forgoing, STATE recognizes that CONTRACTOR brings to the work specified herein certain intellectual property. STATE agrees that CONTRACTOR shall remain the sole owner of said intellectual property during this project and after its completion.

20. INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract and is not a STATE employee for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers'

Compensation Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out the Contractor's activities and responsibilities under this contract, except to the extent specified in this contract.

21. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. CONTRACTORS agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

22. STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

23. PREPAYMENT

The STATE will not make any advance payments before performance by CONTRACTOR under this contract.

24. TAXPAYER ID

Contractor's federal employer ID number _____

25. PAYMENT OF TAXES BY STATE

State is not responsible for and will not pay local, state or federal taxes. State Sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

26. EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties.

CONTRACTOR
Name of College

Name, President

DATE: _____

STATE OF NORTH DAKOTA
Department of Commerce

Alan R. Anderson, Commissioner

DATE: _____