

CONTRACT K _____

BETWEEN

WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT

AND

CONTRACTOR

1. INTRODUCTION

As a result of **RFP 2021-05**, this Contract is made and entered into by and between the Washington State Employment Security Department, hereinafter called "ESD", located at 212 Maple Park Ave SE, Olympia, WA 98501 and (insert Contractor's legal name) , hereinafter called "Contractor", located at (insert Contractor's address).

2. PURPOSE

It is the purpose of this Contract to fund an entity interested and qualified to perform the role of the intermediary and work with regional networks, career connected learning coordinators at the Educational Service Districts, industry and education partners to expand the use of current curricula for the Data Analyst Career Launch Program.

3. CONTRACT MANAGEMENT

ESD's Contract Manager shall monitor the performance and compliance of this Contract. ESD's Contract Manager shall be responsible for the review and acceptance of the Contractor's performance, deliverables, invoices, expenses, and reports from the Contractor. The Contract Manager will be the main contact for any questions about the contract.

ESD Contract Manager responsible for management of this Contract is:

Name: _____
Title: _____
Phone Number: xxx-xxx-xxxx _____
E-mail: _____

Contractor staff member responsible for management of this Contract is:

Name: _____
Title: _____
Phone Number: xxx-xxx-xxxx _____
E-mail: _____

4. DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below.

4.1. "CAREER LAUNCH" means registered apprenticeships, registered apprenticeships for

youth, and programs that combine (1) supervised paid work experience, (2) aligned classroom learning to academic and employer standards, (3) valuable credential beyond a high school diploma or forty-five college credits towards a two-year or four-year post-secondary credential, and (4) result in a competitive candidate, able to continue in employment or successfully compete for jobs leading to a financially-sustainable and fulfilling careers.

- 4.2. "CONTRACTOR" means that agency, firm, organization, individual or other entity performing services and/or providing goods under this Contract. This includes any SUBCONTRACTOR retained by the prime Contractor as permitted under the terms of this Contract.
- 4.3. "FORCE MAJEURE" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.
- 4.4. "MATERIALS" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions.
- 4.5. "MICROBUSINESS" as defined by RCW 39.26.010(16) means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) is owned and operated independently from all other businesses; and (b) has a gross revenue of less than one million dollars annually as reported on its federal income tax return or on its return filed with the Department of Revenue.
- 4.6. "MINIBUSINESS" as defined by RCW 39.26.010(17) means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) is owned and operated independently from all other businesses; and (b) has a gross revenue of less than three million dollars, but one million dollars or more annually as reported on its federal income tax return or on its return filed with the Department of Revenue.
- 4.7. "MINORITY BUSINESS ENTERPRISE," "MINORITY-OWNED BUSINESS ENTERPRISE," or "MBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by the Office of Minority and Women's Business Enterprises. The minority owners must be United States citizens or lawful permanent residents.
- 4.8. **PROGRAM INTERMEDIARIES** – any public, private, non-profit, or non-federal government entity which can perform the following role: convene industry and educators to define career connected learning opportunities and align on needs, facilitate creation of curriculum to meet industry and educator requirements, generate demand with young adults and families. Examples include, but are not limited to, new or existing industry associations, joint labor management councils, regional networks, postsecondary education and training institutions working with multiple employer partners, state agencies, and other community-based organizations and expanded learning partners.

- 4.9. REGIONAL NETWORKS** – Partnerships, established for the purpose of guiding career connected learning opportunities that are both tailored to the local needs of students and employers.
- 4.10.** "SMALL BUSINESS" as defined by RCW 39.26.010(22) means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either: (i) fifty or fewer employees; or (ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the Department of Revenue over the previous three consecutive years; or (b) is certified with the Office of Women and Minority Business Enterprises (OWMBE) under Chapter 39.19 RCW.
- 4.11.** "SUBCONTRACTOR" means agency, firm, organization, individual or other entity other than the prime one, not in the employment of the CONTRACTOR, who is performing all or part of those services or providing all or part of the goods, under this prime Contract or a subcontract entered into in connection with this prime Contract. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.
- 4.12.** "VETERAN-OWNED BUSINESS" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more Veterans.
- 4.13.** "WOMEN'S BUSINESS ENTERPRISE," "WOMEN-OWNED BUSINESS ENTERPRISE," or "WBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by the Office of Minority and Women's Business Enterprises. The women owners must be United States citizens or lawful permanent residents.

5. STATEMENT OF WORK

The Contractor shall furnish the necessary personnel, labor, and services, and otherwise do all things necessary for or incidental to the performance of the work set forth in the Statement of Work attached and incorporated as **Exhibit A**.

6. TERMS AND CONDITIONS

All rights and obligations of the parties to this Contract shall be subject to and governed by this Contract.

7. PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Contract shall start on the date of execution and end on June 30, 2022, unless terminated sooner as provided herein. ESD reserves the right to extend the resulting Contract(s) for up to one additional one-year terms by mutual written consent of both parties. The total duration of the resulting Contract(s), including extensions, will not exceed two years.

8. REPORTING

The Contractor shall provide the ESD Contract Manager quarterly status reports on all Contract activities, budgets, and expenditures using report forms provided by ESD as **Exhibit C**. These reports are to include information on the progress of the project, allowable activities conducted, and outcomes achieved, as well as narrative updates on expenditures. Quarterly reports are due thirty days following the end of a quarter. Quarters end on March 31, June 30, September 30, and December 31.

The settlement package (otherwise known as close-out package) is due sixty (60) days after the end of the contract funding period or as otherwise indicated by ESD Central Budget Office.

9. PERFORMANCE MANAGEMENT AND CORRECTIVE ACTION

ESD reserves the right to review and evaluate the Contractor's performance of all activities, outcomes, and deliverables as defined in this Contract, its Statement of Work, and Contract attachments.

For any quarters which the contractor is 20% or more below performance targets or expenditure projections and/or does not fully perform activities specified in the Contract, the Contractor must develop and submit written corrective actions to the ESD Contract Manager.

10. RIGHTS TO RECAPTURE AND REDISTRIBUTION OF FUNDS

ESD reserves the right to recapture and redistribute all contract funds awarded or made available to the Contractor under this agreement, for reasons including but not limited to the following conditions:

10.1. The Contractor's quarterly performance actuals or expenditures do not meet targets or projections specified in the Contract. If the Contractor is 20% or more below performance targets or expenditure projections for two consecutive quarters, the Contractor will submit to ESD a recommendation regarding the recapture of funds. ESD will receive and consider this recommendation and will issue a decision to the Contractor which may result in the recapture of funds and adjustments to the performance targets or expenditure projections included in this Contract. ESD reserves the right to implement recaptures and adjustments via Contract modification.

10.2. The Contractor does not complete the tasks outlined in this Contract and its Statement of Work.

11. BUDGET CHANGES

The Contractor may make changes to the budget, without a formal modification to the Contract and without securing the prior approval of ESD, under the following conditions:

11.1. The revisions must not result in the need for additional funding;

11.2. The revisions must not result in the need to adjust performance targets established in this Contract.

11.3. The revisions must neither alter the scope of work nor the Statement of Work;

- 11.4. The revisions must not be prohibited by applicable federal or state statutes or regulations;
- 11.5. The revisions do not exceed 10% of the total costs originally budgeted in the category. Such variance may be between line items only and may not alter the total amount of money originally budgeted in the major cost categories. The Contractor will send advance written notices of allowed variances to ESD.

Per Section 24.6, Changes and Amendments, all other changes or modifications to this contract shall be valid only when in writing and signed by the authorized representatives of both parties.

12. COMPENSATION

- 12.1. The parties have agreed that the total compensation including expenses payable to the Contractor, for satisfactorily accomplishing the work set forth in Exhibit A, Statement of Work, will not exceed \$ _____. Compensation for services shall be in accordance with the budget attached and incorporated as Exhibit A-1.
- 12.2. The Contractor will not be reimbursed for any travel expenses, lodging and point to point mileage at rates not to exceed those shown in the current State travel reimbursement rates. For more information see **Exhibit D**, ESD Contractor Travel Reimbursement Information. The amount for such expenses is included in the compensation total above. Reimbursement by ESD for other travel expenses such as parking, taxis etc. will be in accordance with applicable receipts and justifications submitted to ESD. All travel expenses and receipts are to be included in the invoices submitted by the Contractor to ESD.

13. BILLING PROCEDURE

- 13.1. The Contractor shall submit invoices monthly for services performed under this Contract on an Invoice Voucher (Form A-19), or similar invoice. Invoices shall include such information as is necessary for ESD to determine the exact nature of all expenditures, and goods or services provided to and received by ESD. ESD must receive all invoices no later than thirty (30) days after services itemized on invoice are rendered. Failure by the Contractor to submit the invoice by this date may result in non-payment. ESD shall pay the Contractor for completed and approved work within thirty (30) days of receipt of invoice.
- 13.2. Final invoice must be received within thirty (30) days after contract end date.
- 13.3. Each invoice will clearly indicate that it is "FOR SERVICES RENDERED IN PERFORMANCE UNDER ESD CONTRACT NUMBER K _____, PY21/22 Career Connect Washington Data Analyst Program Intermediary Funding. The invoice document shall be submitted to:

Employment Security Department
Attention: Danny Salazar
esdgpworkforceinitiatives@esd.wa.gov

14. ACCEPTANCE

It is understood and agreed by and between ESD and the Contractor that the Contractor's payment is conditioned upon satisfactory performance and acceptance by ESD. ESD reserves the right to withhold payment of any deliverable contingent upon acceptance of the deliverable by

ESD. If defects preventing acceptance of a deliverable are present, ESD shall immediately notify the Contractor in writing of the nature of the defects, and the method of remedy of those defects. The Contractor will take action within fifteen days to remedy defects as to permit acceptance of the subject deliverable. Notwithstanding the other provisions of this Contract, ESD shall not unreasonably withhold acceptance of a deliverable nor reimbursement of the Contractor.

15. EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS (MANDATORY INDIVIDUAL ARBITRATION)

Contractor represents and warrants, as previously certified in Contractor’s bid submission, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

16. INSURANCE

16.1. Contractor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Washington. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to ESD within five business days of Contractor’s receipt of such notice. Failure to buy and maintain the required insurance may, at ESD’s sole option, result in this Contract’s termination.

16.2. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

16.3. Upon ESD’s request Contractor shall furnish to ESD copies of certificates of all required insurance within thirty (30) days.

16.4. Minimum Acceptable Limits

The minimum acceptable limits must be as indicated below, with no deductible for each of the following categories:

16.4.1. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

16.4.2. Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, with a combined single limit of not less than \$1 million per accident;

16.4.3. Professional Liability Errors and Omissions coverage of not less than \$10 million per claim. Contractor shall continue Professional Liability Errors and Omissions coverage and be required, upon request, to provide ESD certificates of insurance for one year beyond the expiration or termination of this of this

Contract.

16.5. Industrial Insurance Coverage

16.5.1. Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless ESD and the State and its agencies, officials, agents or employees from claims by Contractor's employees or agents.

16.5.2. The Contractor must comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund.

16.5.3. The Agency may:

16.5.3.1. Deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by Agency under this Contract; and

16.5.3.2. Transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services.

16.5.4. This provision does not waive any of L&I's right to collect from the Contractor.

17. SUBCONTRACTS

17.1. The Contractor shall not subcontract work contemplated under this Contract and/or use an outside consultant without obtaining the prior written approval of ESD.

17.2. Contractor acknowledges that such approval for any Subcontractor does not reduce or release the Contractor of its liability for any breach of the Contractor's or Subcontractor's duties.

17.3. For any proposed Subcontractor, the Contractor shall be responsible for Subcontractor's compliance with the terms and conditions of this Contract, including but not limited to ensuring that the Subcontractor follows ESD's reporting formats and procedures as specified by ESD.

17.4. The Contractor shall remain responsible and liable to ESD for Subcontractor's performance to the same extent that Contractor would be responsible and liable to ESD under this Contract had Contractor performed such services.

17.5. At ESD's request, the Contractor will forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts.

17.6. Should Contractor file for or has filed against it a bankruptcy petition and the petition is not dismissed within sixty (60) days after the filing date or Contractor becomes insolvent, or this Contract is terminated for cause, ESD will have the right to enter into direct agreements with any Subcontractor.

18. TERMINATION, SUSPENSION, AND REMEDIES

18.1. Termination or Suspension for Cause

18.1.1. In the event ESD determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, ESD has the right to suspend or terminate this Contract. ESD may terminate immediately or, at its sole discretion, ESD may notify the Contractor in writing of the need to take corrective action, prior to termination, and allow the Contractor time to cure. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or the costs to cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

18.1.2. ESD reserves the right to suspend all or part of this Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by ESD to terminate this Contract.

18.1.3. A termination shall be deemed to be a "Termination for Convenience" if the investigation determines that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of ESD provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

18.1.4. ESD reserves the right to immediately suspend all, or part of, this Contract, and to withhold further payments, or to prohibit the Contractor from incurring additional obligations of funds when it has reason to believe that fraud, abuse, malfeasance, misfeasance or nonfeasance has occurred on the part of the Contractor under this Contract.

18.2. Termination for Funding Reasons

ESD may unilaterally terminate this Contract in the event that funding from federal, state or other sources becomes no longer available to ESD or is not allocated for the purpose of meeting ESD's obligation hereunder. Such action is effective upon receipt of written notification by the Contractor.

18.3. Termination or Suspension for Convenience

Except as otherwise provided in this Contract, ESD may, by ten (10) days' written notice, beginning on the second day after mailing, suspend or terminate this Contract, in whole or in part. If this Contract is so suspended or terminated, ESD shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of suspension or termination. If this Contract is suspended, the Schedule shall be delayed for a period of time equal to the period of such suspension. ESD may, by ten (10) days' written notice, beginning on the second day after mailing, lift the suspension of the Contract, in whole or in part, at which time the Schedule and the parties' right and obligations shall resume to the extent that the suspension is lifted.

18.4. Termination for Withdrawal of Authority

In the event that ESD's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, ESD may terminate this Contract by seven (7) calendar days or other appropriate time period by written notice to Contractor. No penalty shall accrue to ESD in the event this Section is exercised. This Section shall not be construed to permit ESD to terminate this Contract in order to acquire similar Services from a third party.

19. TERMINATION PROCEDURE

- 19.1.** Upon termination of this Contract, ESD, in addition to any other rights provided in this Contract, may require the Contractor to deliver to ESD any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the TREATMENT OF ASSETS, **Section 22** will apply in such property transfer.
- 19.2.** Transition. In order to ensure business continuity, upon termination or expiration of this Contract, Contractor shall confer and cooperate with ESD in carrying out the activities required for transition in a safe and orderly manner without interruption of Services by Contractor to a replacement Contractor, subsequent operator, or ESD as applicable. Obligations under this provision shall continue for no longer than ninety (90) days and are conditioned upon reasonable, mutually agreed upon compensation for services beyond the date of termination or expiration.
- 19.3.** ESD shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by ESD and the amount agreed upon by the Contractor and ESD for (1) completed work and service(s) for which no separate price is stated; (2) partially completed work and services; (3) other property or services which are accepted by ESD; and (4) the protection and preservation of property, unless the termination is for default, in which case ESD shall determine the extent of liability of ESD. Failure to agree with such determination shall be a dispute within the meaning of DISPUTES, **Section 24.11**, of this Contract. ESD may withhold from any amounts due to the Contractor such sum as ESD determines to be necessary to protect ESD against potential loss or liability.
- 19.4.** The rights and remedies of ESD provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- 19.5.** After receipt of a notice of termination and except as otherwise directed by ESD, the Contractor shall:
- 19.5.1.** Stop work under this Contract on the date, and to the extent specified, in the notice;
 - 19.5.2.** Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of work under this Contract as is not terminated;
 - 19.5.3.** Assign to ESD, in the manner, at the times, and to the extent directed by ESD, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case ESD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - 19.5.4.** Settle all outstanding liabilities and all claims arising out of such termination of

orders and subcontracts, with the approval or ratification of ESD to the extent ESD may require, which approval or ratification shall be final for all purposes of this clause;

- 19.5.5.** Transfer title to ESD and deliver in the manner, at the times, and to the extent directed by ESD any property which, if the Contract had been completed, would have been required to be furnished to ESD;
- 19.5.6.** Complete performance of such part of the work as shall not have been terminated by ESD; and
- 19.5.7.** Take such action as may be necessary, or as ESD may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which ESD has or may acquire an interest.

20. TREATMENT OF ASSETS

- 20.1.** Title to all property furnished by ESD shall remain in ESD. Title to all property purchased by the Contractor the cost of which the Contractor has been reimbursed as a direct item of cost under this Contract, shall pass to and vest in ESD upon delivery of such property by the Contractor. The title shall only pass to the Contractor if ESD specifically agrees to grant title in this Contract for asset(s) purchased.
- 20.2.** Any property of ESD furnished to the Contractor shall, unless otherwise provided herein, or approved by the Contract Manager in writing, be used only for the performance of this Contract.
- 20.3.** Property will be returned to ESD in like condition to that in which it was furnished to the Contractor, normal wear and tear excepted. The Contractor shall be responsible for any loss or damage to property of ESD in the possession of the Contractor which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain said property in accordance with sound management practices.
- 20.4.** If any ESD property is damaged or destroyed, the Contractor must notify ESD and shall take all reasonable steps to protect that property from further damage.
- 20.5.** The Contractor must surrender to ESD all property of ESD upon completion, termination or cancellation of this Contract.

21. USE AND DISCLOSURE OF INFORMATION

The Contractor shall use any private and confidential information provided under this Contract solely for the purpose for which the information was disclosed. The Contractor shall not misuse any private and confidential information under this Contract. The Contractor shall not disclose any private and confidential information unless the disclosure is authorized by law. The misuse or unauthorized release of private and confidential information shall subject Contractor, its employees or agents to a civil penalty of \$5,000 and other applicable sanctions under state and federal law (RCW 50.13.060[13] and 50.13.080[3]).

22. GENERAL TERMS

22.1. RECORDS and AUDITS

22.1.1. Record Retention

Contractor shall retain all books, records, documents and other material which reflect all direct and indirect costs of any nature expended in the performance of this Contract for a period of six years from termination of the Contract. Records shall be retained beyond the above referenced retention periods if litigation or audit is begun prior to the end of the period referenced above, or if a claim is instituted prior to the end of the period referenced above involving the Contract covered by the records. In these instances, the records will be retained until the litigation, claim or audit has been finally resolved.

22.1.2. Access To Records and Facilities / Audits

ESD and its designees shall have full access to and the right to examine and copy any or all books, records, papers, documents and other material regardless of form or type which are pertinent to the performance of this Contract, or reflect all direct and indirect costs of any nature expended in the performance of this Contract. ESD shall have the right to access, examine and inspect any site where any phase of the program is being conducted, controlled or advanced in any way. Such sites may include the home office, any branch office, or other locations of the Contractor. The Contractor must maintain its records and accounts in such a way as to facilitate the audit and examination, and assure that Subcontractors also maintain records that are auditable. Access must be available at all reasonable times not limited to the required retention period but as long as records are retained, and at no additional cost to ESD.

22.2. ADVANCE PAYMENTS PROHIBITED

No payment in advance or in anticipation of services or supplies to be provided by this Contract shall be made by ESD. In cost reimbursement contracts, the Contractor shall be entitled only to reimbursement for expenses incurred during the contract period for work accomplished as provided elsewhere in this Contract. In fixed unit price contracts, the Contractor shall be entitled only to payment for work accomplished during the contract period and in accordance with the terms of this Contract.

22.3. ASSIGNMENT

The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

22.4. ASSURANCES

ESD and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current or future federal, state or local laws, rules and regulations.

22.5. ATTORNEY FEES AND COSTS

If any litigation is brought to enforce this Contract or any litigation arises out of any contract term, clause or provision, each party shall be responsible for its own expenses, costs and attorney fees.

22.6. CHANGES AND AMENDMENTS

- 22.6.1.** ESD or Contractor may agree to changes to the terms of this Contract. Such changes, including any increase or decrease in the amount of payment or reimbursement, which are mutually agreed upon by the Parties, will only be valid when in writing and must be signed by the authorized representatives of the parties.
- 22.6.2.** If the changes requested by either party substantially changes the scope of work of the original contract or substantially increases the value of the original contract ESD may be required to purchase the additional goods and/or services through a new competitive solicitation (RCW 39.26.120[2]). However, in such circumstances, no new competitive solicitation shall be required if an exception to competitive solicitation applies (RCW 39.26.125).

22.7. CONFLICT OF INTEREST

- 22.7.1.** Notwithstanding any determination by the Executive Ethics Board or other tribunal, ESD may, in its sole discretion, by written notice to the Contractor, terminate this Contract if it is found after due notice and examination by ESD that there is a violation of the Ethics in Public Service Act, RCW 42.52, or any similar statute involving the Contractor in the procurement of, or performance under, this Contract.
- 22.7.2.** In the event this Contract is terminated as provided above, ESD shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. The rights and remedies of ESD provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which ESD makes any determination under this clause may be reviewed as provided in the DISPUTES clause of this Contract.

22.8. COSTS

22.8.1. Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

22.8.2. Duplication of Billed Costs

The Contractor shall not bill ESD for costs if the Contractor is being paid by another source for those same costs.

22.9. COVENANT AGAINST CONTINGENT FEES

- 22.9.1.** The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. This does not include bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.

- 22.9.2.** ESD shall have the right, in the event of breach of this clause by the Contractor, to

annul this Contract without liability or, by its sole discretion, to deduct from the contract price or consideration or otherwise recover by other means the full amount of such commission, percentage, brokerage or contingent fees. In no event shall ESD be liable for any commission, percentage, brokerage, or contingent fees.

22.10. DEBARMENT AND SUSPENSION

The Contractor has provided, in **Exhibit B** to this Agreement, its certification that it is in compliance with, and shall not contract with, individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549, and "Debarment and Suspension, codified at 29 CFR part 98.

22.11. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties it should be resolved at the lowest administrative level possible and be escalated to the project owners. If it cannot be resolved by direct negotiation, the parties agree to participate in non-binding mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a dispute hearing, a Dispute Resolution Board, or arbitration.

22.12. FORCE MAJEURE

22.12.1. Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. If either party is delayed by force majeure, said party shall provide written notification to the other party. The notification shall provide evidence of the force majeure and commercially reasonable efforts to mitigate the effects to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by contract modification for the period of delay or inability to perform due to such occurrences.

22.12.2. Either party shall have the right to terminate this Contract without liability if for reason of Force Majeure, said party shall provide written notification to the other party. The notification shall provide evidence of Force Majeure.

22.12.3. Despite Force Majeure ESD maintains its rights under this Contract to Terminate for Convenience.

22.13. INDEMNIFICATION

- 22.13.1.** To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the State of Washington, ESD, and all officials, agents, and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of this Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any Subcontractor, or its employees.
- 22.13.2.** Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any Subcontractor's performance or failure to perform this Contract. Contractor's obligation to indemnify, defend and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees or officials.

22.14. INDEPENDENT CAPACITY OF CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and their employees or agents performing under this Contract are not employees or agents of ESD. The Contractor will not hold himself/herself out as, nor claim to be an officer or employee of, ESD or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law.

22.15. JURISDICTION AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County. All parties agree to the exclusive jurisdiction of such court and waive any right to challenge jurisdiction or venue.

22.16. LIMITATION OF LIABILITY

- 22.16.1.** The parties agree that neither Contractor nor ESD shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except any claim related to bodily injury or death; a breach of confidentiality or cyber security; or a claim or demand based on patent, copyright, or other intellectual property right infringement.
- 22.16.2.** Neither party shall be liable to the other party unless damage is proximately caused by such party's respective fault or negligence. Neither the Contractor nor ESD shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the party. Such causes may include, but are not restricted to, acts of God or acts of a governmental body other than the ESD acting in either its sovereign or contractual capacity.

22.17. LOBBYING ACTIVITIES

Where appropriate, the Contractor has provided, in Exhibit C to this Agreement, its certification that it is in compliance with the requirements of 29 CFR Part 93, restricting lobbying activities. The Contractor shall also make available upon request required

disclosure information if the Contractor participates in lobbying activities during the Contract period.

22.18. SEVERABILITY

The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.

22.19. SIGNATURE AUTHORITY

22.19.1. This Contract, any alteration, amendment, modification, or waiver of any clause or condition of is not effective or binding unless made in writing and signed by the Commissioner of ESD or any ESD authorized representative that has been given delegated authority prior to signing.

22.19.2. Contractor represents and warrants that the person executing this Contract on its behalf has the full right and authority to fully commit and bind Contractor.

22.20. SITE SECURITY

While on ESD premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire, or other security policies or regulations.

22.21. USE OF NAME PROHIBITED

22.21.1. The Contractor shall not in any way contract on behalf of or in the name of ESD. Nor shall the Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of ESD.

22.21.2. The parties have mutually agreed to the terms and conditions contained herein, including attached exhibits.

22.22. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing signed by an authorized representative of ESD.

23. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and State Statutes and Regulations;
- Those Terms and Conditions as contained in this Contract;
- The Statement of Work , Exhibit A;
- The Budget and Performance Form attached as Exhibit A-1;
- RFP 2021-05, incorporated by reference;
- Contractor's Response to RFP 2021-05, incorporated by reference; and
- Any other provisions of this Contract whether incorporated by reference or otherwise.

24. INCORPORATED DOCUMENTS

Each of the documents listed below are incorporated into this Contract:

- Exhibit A Statement of Work
- Exhibit A-1 Budget and Performance Form
- Exhibit B Certification Regarding Debarment and Suspension
- Exhibit C Quarterly Narrative Report Form
- Exhibit D State Travel Reimbursement Information

25. ELECTRONIC SIGNATURES, COUNTERPARTS, AND DELIVERY

The parties agree that this Contract may be executed in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement; and that electronic signature, or e-signature, of this Contract shall be the same as execution of an original ink signature; and that e-mail, electronic, or facsimile delivery of a signed copy of this Contract shall be the same as delivery of an original.

26. THE ENTIRE AGREEMENT

This Contract sets forth in full the entire agreement of the parties in relation to the subject matter of this Contract. It supersedes any other agreement, representation, or understandings, verbal or otherwise, relating to the subject matter of this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract.

Contractor

Washington State
Employment Security Department

SAMPLE – DO NOT SIGN

Signature Date

Signature Date

Name

Name

Title

Title/Division

| |
|---|
| Voluntary reporting: OMWBE Certification Number or "Self-certified": # _____ <input type="checkbox"/> Minority Owned Business <input type="checkbox"/> Woman Owned Business <input type="checkbox"/> Veteran Owned Business <input type="checkbox"/> Micro, Mini or Small Business (as defined by RCW 39.26.010(16),(17) or (22) |
|---|

EXHIBIT A: STATEMENT OF WORK

Career Connect Washington Intermediary Funding – (Insert Contractors Legal Name)

(Insert Contractors Legal Name) hereinafter called "Contractor" or "Grantee," will complete the work described in the Statement of Work Matrix which follows and provide the deliverables indicated for all tasks. The Contractor will submit quarterly reports to ESD, outlining and detailing Statement of Work activities as well as progress toward, and completion of, all outcomes and deliverables.

Contractor will receive **\$100,000** to conduct activities and complete all outcomes and deliverables described in the Statement of Work Matrix by June 30, 2022.

| STATEMENT OF WORK MATRIX | | | |
|---|--|--|---|
| Tasks | Timeline | Activities to accomplish | Anticipated Outcomes/Deliverables |
| Task 1: Grow Employer internships slots for the Data Analyst Career Launch Program. | By June 30, 2022, with reports submitted quarterly | <ul style="list-style-type: none"> | <ul style="list-style-type: none"> Quarterly reports to ESD, using forms provided by ESD, which summarize and describe accomplishment of Task 1. Letters of Agreement from (#) industry partners providing supervised paid experience to students in (___) County. Letter of Agreement from School District of education partners providing aligned classroom learning to academic and employer standards. Will create (#) student Career Launch slots to be enrolled in Data Analyst Program. Will work with Regional Network partnerships to expand and create additional career launch slots. Use elements from the CCW Marketing Tool Kit in your communications. Brand or co-brand relevant materials with CCW logos. Help establish CCW terms in common vocabulary and use messages from the Tool Kit to connect |

| | | | |
|---|--|--|---|
| | | | program development work to the statewide effort. |
| Task 2: Expand education pathways with Community and Technical Colleges for the Data Analyst Career Launch Program. | By June 30, 2022, with reports submitted quarterly | • | <ul style="list-style-type: none"> Partnership Agreements from (#) Community & Technical College partner providing (#) college credits towards a postsecondary credential. Expand education pathways to (#) additional post-secondary degree plans. |
| Task 3: Engage in the Career Connect WA community of practice | Ongoing throughout the duration of the contract. | <ul style="list-style-type: none"> Participate in technical assistance seminars, peer-to-peer learning community, and other Career Connect WA system activities. Collaborate with Regional Networks to spread curriculum and best practices throughout the system. | <ul style="list-style-type: none"> Attendance at events (Virtual and in-person). Brief, specific updates on each item in all quarterly reports to ESD. Travel. Document effort with photographic evidence. |

Sample Contract

Exhibit A-1

Budget and Performance Form

Sample Contract

Exhibit B

Certification Regarding Debarment and Suspension

APPENDIX A TO TITLE 29, PART 98 - CERTIFICATION REGARDING DEBARMENT AND SUSPENSION
Certification for Contracts, Grants, Loans, and Cooperative Agreements

1. The undersigned (i.e., the Contractor signatory) certifies, to the best of his or her knowledge and belief, that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(B) of this certification; and,
 - D. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation of this proposal (or plan).

Name of Contractor – Print full legal entity name of organization

Signature of authorized person

Print Name of person making certifications for firm

Title of person signing certificate

Print city and state where signed

Date

EXHIBIT C

Quarterly Narrative Report

| | | | | | |
|---------------------------|---------|---------|---------------|---------|--------------|
| Project Name: | | | | | |
| Contract #: | | | | | |
| Funding Recipient: | | | | | |
| Contact Person: | | | | | |
| Phone: | | | Email: | | |
| Reporting Period: | Jan-Mar | Apr-Jun | Jul-Sep | Oct-Dec | Year: |

| 1. Tasks outlined on Exhibit A (Statement of Work) | Status: <i>Not Started In Progress Completed</i> | Briefly explain what has been accomplished towards the deliverables for this reporting quarter. |
|---|--|--|
| Task 1 – Grow Employer internships slots for the Data Analyst Career Launch Program. | | |
| Task 2 – Expand education pathways with Community and Technical Colleges for the Data Analyst Career Launch Program. | | |
| Task 3 – Engage in the Career Connect WA community of practice. | | |
| 2. Successes – Share a success story that happened during the performance period. Pictures and video with permission to use publicly are optional but appreciated and may be used in state outreach materials to promote your success. | | |
| 3. Challenges – Describe any challenges your team encountered during the reporting period and how you are addressing the challenges. | | |
| 4. Best Practices – What is working particularly well? What can be shared about the project that could benefit other intermediaries? Are you willing to share your practice on a conference call? | | |
| 5. State Support – What is the state-level team doing well to support your success? What can the state-level team change or improve on to support your success? | | |
| 6. Number of Partnership Agreements | | |
| | Planned | Actual |
| <i>Industry partner providing supervised paid work experience to students</i> | | |
| <i>Educational partner providing aligned classroom</i> | | |

| | | |
|--|--|--|
| <i>learning to academic and employer standards</i> | | |
| 7. <u>Planned</u> Number of Program Slots | <u>Actual</u> Number of Program Slots | |
| | | |
| 8. <u>Planned</u> Expenditures | <u>Actual</u> Expenditures | |
| | | |
| <i>If expenditures are below target by 20% or more for the reporting period, contractor must provide root cause analysis and corrective action to remedy by end of next reporting period</i> | | |

Important: Financial Report are due at the end of every Quarter, please email to ESDGFSDFundMGMT@ESD.WA.GOV

Sample Contract

EXHIBIT D

EMPLOYMENT SECURITY DEPARTMENT - CONTRACTOR TRAVEL REIMBURSEMENT INFORMATION

GENERAL: Contractors may only be reimbursed for travel expenses that are both necessary and reasonable to carry out the terms of this contract.

VEHICLE, LODGING, AND SUBSISTENCE EXPENSES: Private vehicle mileage, lodging, and meal expenses will be reimbursed at the Washington State Office of Financial Management rates in effect at the time travel occurs. The rates may be accessed at the [Office of Financial Management Travel Page](http://www.ofm.wa.gov/resources/travel.asp) at www.ofm.wa.gov/resources/travel.asp under Washington state per diem maps.

FIFTY MILE RULE FOR LODGING: Lodging costs may not be reimbursed if the lodging expense is incurred at a facility that is within fifty (50) miles of the contractor's home or office, whichever is closer, unless one of the following conditions apply:

1. The contractor's workday (combined work and travel time) for the day will exceed 12 hours (workdays in excess of 12 hours may be considered a health and safety issue).
2. Inclement weather precludes the contractor from returning to the office or home without risk to personal safety.

If lodging reimbursement is claimed under either of the above exceptions, a full explanation must be provided when the request for reimbursement is submitted.

EXCEPTION TO THE STANDARD REIMBURSEMENT RATE FOR LODGING: Under the following conditions, lodging may be reimbursed for amounts higher than the GSA standard rates:

1. The contractor stays at the specific lodging facility where the meeting/conference is being held in order to achieve maximum benefit from the event by interacting with other meeting/conference participants.
2. Affordable lodging accommodations are not available or cannot be obtained within a reasonable commuting distance from the meeting/conference site.
3. The contractor, because of special duties associated with carrying out the terms of this contract, necessarily incurs unusually high lodging expenses, e.g., rents a suite that is also used as a meeting room.

If lodging reimbursement is claimed under any of the above exceptions, the contractor must select the most economically priced room or suite available and must attach the following to the request for reimbursement:

- reason for claiming an exception to the standard lodging rate
- original lodging receipts

RENTAL CARS: Contractors may rent vehicles only when necessary to carry out the terms of this contract and only when no other more cost effective means of transportation are available (airporter, limousine, taxi, etc.). Reimbursement will not be made to the contractor for any rental car expenses

that are incurred to conduct personal business. An original receipt from the rental car agency must accompany the request for reimbursement.

MEALS: Meals will be reimbursed for overnight travel or business meetings/conferences at the standard GSA rates when the contractor is in travel status during the following ESD established meal periods:

- Breakfast – 7:00 AM to 9:00 AM
- Lunch – 11:00 AM to 1:00 PM
- Dinner – 4:30 PM to 6:00 PM

MISCELLANEOUS: Contractors may also request reimbursement for miscellaneous travel expenses, including parking fees, ferry tolls, ground transportation, bridge tolls, and telephone calls. Tips for meals and lodging are already included in the meal rates and will not be reimbursed as a miscellaneous expense. A receipt must be provided for any single miscellaneous charge of \$25.00 or more.

REQUESTING REIMBURSEMENT: To be reimbursed for travel expenses, the contractor must submit a log that details:

1. The beginning and ending dates of each trip.
2. From and To travel locations.
3. The hour of departure and return.
4. The specific meals being claimed for each trip, i.e., breakfast, lunch and/or dinner (receipts need not be provided).
5. Amount of any lodging expenses being claimed and the name of the lodging facility per trip (original lodging receipt must be attached).
6. The amount of any private vehicle mileage being claimed for each trip and the reimbursement amount, i.e., the mileage multiplied by the current private vehicle rate.
7. The amount and description of any miscellaneous expenses being claimed per trip. Rental car expenses should be included as a miscellaneous expense and requires an explanation of why a rental car was needed.
8. An explanation of the purpose of the trip and how it contributed to the objectives of the contract.