

BEST IN CLASS AGREEMENT

The state of North Dakota, acting through its North Dakota Department of Health and Human Services, Human Services Division, Early Childhood Section (State), has determined the services identified in the Scope of Service paragraph below should be purchased.

Williston Basin School District #7 (Awardee), PO Box 1407, 1201 9<sup>th</sup> Ave NW, Williston, ND 58802-1407, proposes to provide those services.

State and Awardee therefore enter into the following:

1. TERM OF THE AGREEMENT

This Agreement runs from July 1, 2023, through June 30, 2024. This Agreement will not automatically renew.

2. SCOPE OF SERVICE

Awardee shall implement the Best in Class program in accordance with North Dakota Administrative Code Chapter Section 50-11.1-22-24 and Attachment A – Best in Class Program Description 2023-2024, which is made a part of this Agreement through its attachment here.

3. COMPENSATION

State, upon receipt and approval of SFN 1763 Request for Reimbursement or other form required by State, shall pay Awardee \$240,000 (2 sections, large group sizes) for completing the scope of service per the following milestones:

Milestone #1 – Submit SFN 1763 by September 11, 2023, to receive \$72,000 (30% of award amount).

Milestone #2 – Submit SFN 1763 by December 11, 2023, to receive \$84,000 (35% of award amount).

Milestone #3 – Submit SFN 1763 by March 11, 2024, to receive \$72,000 (30% of award amount).

Milestone #4 – Submit SFN 1763 by June 11, 2024, to receive \$12,000 (5% of award amount).

Total payment under this Agreement may not exceed \$240,000. Awardee agrees to provide evidence of matching funds equal to 15% of total awarded funds expended in the Agreement period. Evidence of match is required to be provided to State in conjunction with Milestone #3.

Awardee may use awarded funds in accordance with the eligible uses of funds identified in Attachment A. Awardee may not use awarded funds for construction or rehabilitation.

4. DEPARTMENT ASSISTANCE

Awardee shall utilize a State Best in Class coach throughout the award period to help Awardee optimize child outcomes and support Awardee's capacity to provide quality experiences for children. Coaching will occur through observation, dialogue, inquiry/reflection, and goal setting, and will include opportunities to participate in Best in Class Communities of Practice. State will also provide Awardees with coaching from a health consultant who will focus on health and safety related goal setting.

5. TERMINATION

a. Termination by Mutual Agreement or Notice

This Agreement may be terminated at any time by mutual consent of both parties executed in writing, or upon 30-days' written notice by either party, with or without cause.

b. Early Termination in the Public Interest

State is entering into this Agreement for the purpose of carrying out the public policy of the state of North Dakota, as determined by its Governor, Legislative Assembly, and Courts. If this Agreement ceases to further the public policy of the state of North Dakota, State, in its sole discretion, by written notice to Awardee, may terminate this Agreement in whole or in part.

c. Termination for Lack of Funding or Authority

State may terminate the whole or any part of this Agreement, effective upon delivery of written notice to Awardee or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, 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.
- 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 Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

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

d. Termination for Cause

State may terminate this Agreement effective upon delivery of written notice to Awardee, or any later date stated in the notice:

- 1) If Awardee fails to provide services required by this Agreement within the time specified or any extension agreed to by State; or
- 2) If Awardee fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

The rights and remedies of State provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

6. NONPERFORMANCE

Failure by Awardee to perform the terms of this Agreement constitutes a breach of contract and will result in the termination of the Agreement. If a breach by Awardee renders the Agreement impossible of performance by Awardee and is caused by circumstances beyond the control of Awardee, and through no fault of Awardee, the Agreement will be terminated and State may set off, against any liability or obligations owed to Awardee under this Agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach.

7. FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, flood, riot, terrorism, pandemics, acts of God, or war if the event is beyond the party's reasonable control, and the affected party gives notice to the other party immediately upon occurrence of the event that caused, or is reasonably expected to cause, the delay or default.

8. AWARDEE'S UNDERSTANDING OF TERM OF FUNDING

Awardee understands that this Agreement is a one-time agreement and acknowledges that it has received no assurances that this Agreement may be extended beyond its expiration date.

9. AWARDEE ASSURANCES

This Agreement will be construed according to the laws of the state of North Dakota. In connection with furnishing supplies or performing work under this Agreement, persons who contract with or receive funds to provide services to State are obligated and agree to comply with all local, state, and federal laws, regulations, and executive orders related to the performance of this Agreement, including the following: Fair Labor Standards Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the North Dakota Human Rights Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, the Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1970, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Drug-Free Workplace Act of 1988, the Americans with Disabilities Act of 1990, Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act of 1992, the Pro-Children Act of 1994, Title IX of the Education Amendments of 1972, and Section 1557 of the Affordable Care Act.

By signing this Agreement Awardee certifies that neither Awardee, Subcontractor, nor their principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with the state or federal government by any department or agency of the state or federal government.

Awardee must be an approved awardee with the Office of Management and Budget within the state of North Dakota as required by North Dakota Century Code § 54-44.4-09.

10. AUTHORITY TO CONTRACT

Awardee may subcontract with qualified vendors of services, provided that any subcontract acknowledges the binding nature of this Agreement, and incorporates this Agreement, together with its attachments, as appropriate. Awardee is solely responsible for the performance of any subcontractor. Awardee may not contract for or on behalf of or incur obligations on behalf of State. Awardee may not assign or otherwise transfer or delegate any right or duty without State's express written consent.

11. INDEPENDENT ENTITY

Awardee is an independent entity under this Agreement. Awardee, its employees, agents, or representatives are not employees of State for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this Agreement may be construed to represent the creation of an employer/employee relationship between State and Awardee. Awardee retains sole and absolute discretion in the manner and means of carrying out Awardee activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

12. INDEMNITY

Awardee agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers, and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Awardee to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under North Dakota Century Code § 54-12-08. Awardee also agrees to reimburse the State for all costs, expenses, and attorneys' fees incurred if the State prevails in an action against Awardee in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

13. INSURANCE

- a. Awardee 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 coverages:
  - 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
  - 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
  - 3) Workers' compensation coverage meeting all statutory requirements.
- b. The insurance coverages listed above must meet the following additional requirements:
  - 1) 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 State. The policies shall be in form and terms approved by State.
  - 2) Awardee shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this Agreement.
  - 3) Failure to provide insurance as required in this Agreement is a material breach of contract entitling State to terminate this Agreement immediately.
  - 4) Awardee shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

14. NOTICE

Any notice or other communication required under this Agreement must be given by registered or certified mail and is complete on the date mailed when addressed to the parties at the following addresses:

Williston Basin School District #7  
PO Box 1407  
1201 9<sup>th</sup> Ave NW  
Williston, ND 58802-1407

OR

ND Department of Health and  
Human Services  
Early Childhood Section  
Attn: Kay Larson, Director  
600 E Boulevard Ave  
Bismarck, ND 58505

Notice provided under this provision does not meet the notice requirements for monetary claims against State found at North Dakota Century Code § 32-12.2-04.

15. INTEGRATION, MODIFICATION, AND CONFLICT IN DOCUMENTS

This Agreement constitutes the entire Agreement between Awardee and State. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement. No alteration, amendment, or modification of this Agreement is effective unless it is reduced to writing, signed by the parties, and attached to the Agreement.

All terms and conditions contained in any end user agreements (e.g., automated click-throughs, shrink wrap, or browse wrap) are specifically excluded and null and void, and shall not alter the terms of this Agreement. Clicking shall not represent acknowledgement or agreement to any terms or conditions contained in those agreements.

If any inconsistency exists between this Agreement and other provisions of collateral contractual agreements, which are made a part of this Agreement by reference or otherwise, the provisions of this Agreement control.

16. SEVERABILITY

If any term of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement does not contain the illegal or unenforceable term.

17. APPLICABLE LAW AND VENUE

This Agreement is governed by and construed according to the laws of the state of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

18. ASSIGNMENT

Awardee may not assign this Agreement without State's express written consent, provided, however, that Awardee may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Agreement, whether by merger, reorganization, operation of law, or otherwise. Should the assignee be a business or entity with whom State is prohibited from conducting business, State shall have the right to terminate without cause. This Agreement is equally binding on the respective parties and their successors and assigns.

19. SPOILIATION – PRESERVATION OF EVIDENCE

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

20. WORKS FOR HIRE

Awardee acknowledges that all work(s) under this Agreement is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to State all rights and interests Awardee may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by Awardee in performance of this Agreement for State shall be the sole property of State, and Awardee hereby assigns and transfers all its right, title, and interest therein to State. Awardee shall execute all necessary documents to enable State to protect State's intellectual property rights under this section.

21. WORK PRODUCT, EQUIPMENT, AND MATERIALS

All work product, equipment, and materials created for State or purchased by State under this Agreement belong to State and must be delivered to State at State's request upon expiration or termination of this Agreement.

22. CONFIDENTIAL INFORMATION

Awardee shall not use or disclose any information it receives from State under this Agreement that State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by State. State shall not disclose any information it receives from Awardee that Awardee has previously identified as confidential and that State determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law found in North Dakota Century Code chapter 44-04. The duty of State and Awardee to maintain confidentiality of information under this section continues beyond the term of this Agreement, including any extensions or renewals.

23. COMPLIANCE WITH PUBLIC RECORDS LAWS

Awardee understands that, in accordance with this Agreement's Confidential Information section, State must disclose to the public upon request any records it receives from Awardee. Awardee further understands that any records obtained or generated by Awardee under this Agreement, except for records that are confidential under this Agreement, may, under certain circumstances, be open to the public upon request under certain circumstances under the North Dakota open records law. Awardee agrees to contact State immediately upon receiving a request for information under the open records law and to comply with State's instructions on how to respond to the request.

24. ATTORNEY FEES

If a lawsuit is filed by State to obtain performance due under this Agreement, and State is the prevailing party, Awardee shall pay State's reasonable attorney fees and costs in connection with the lawsuit, except when prohibited by North Dakota Century Code § 28-26-04.

25. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties may enforce their rights and remedies in judicial proceedings. State does not waive any right to a jury trial.

26. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Awardee shall comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights. Awardee shall timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums. Awardee also shall have and keep current at all times during the term of this Agreement all licenses and permits required by law. Awardee's failure to comply with this section may be deemed a material breach by Awardee entitling State to terminate in accordance with the Termination for Cause section of this Agreement.

27. ACCESS TO BOOKS AND RECORDS

Awardee shall provide State, the federal government, and their duly authorized representatives access to the books, documents, papers, and records of Awardee, which are pertinent to the services provided under this Agreement, for the purpose of making an audit or examination, or for making excerpts and transcripts. All records, regardless of physical form, and the accounting practices and procedures of Awardee relevant to this Agreement are subject to examination by the North Dakota State Auditor, the Auditor's designee, or federal auditors. Awardee shall maintain all of these records for at least six years following completion of this Agreement and be able to provide them at any reasonable time. State, State Auditor, or Auditor's designee shall provide reasonable notice.



WILLISTON BASIN SCHOOL DISTRICT #7

By \_\_\_\_\_ DATE

Its \_\_\_\_\_

86-1316289  
Awardee's Federal Taxpayer Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HEALTH AND  
HUMAN SERVICES

By \_\_\_\_\_ DATE  
SARA STOLT  
INTERIM COMMISSIONER

By \_\_\_\_\_ DATE  
KYLE J. NELSON  
CONTRACT OFFICER  
Approved for form and content