



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

INTERGOVERNMENTAL AGREEMENT (IGA)

Contract between Arizona Department of Economic Security ("ADES" or "Department") and Southeast Arizona Workforce Connection ("Contractor").

WHEREAS the Department is duly authorized to execute and administer contracts under A.R.S § 41-1954; and

WHEREAS the Contractor is duly authorized to execute and administer contracts under A.R.S. §11-952; and

WHEREAS the Department and the Contractor are authorized by A.R.S. § 11-952 to enter into agreements for joint or cooperative action to contract for the services specified in this contract;

WHEREAS, the Department and Contractor agree to abide by all the terms and conditions set forth in this Contract.

NOW THEREFORE, in consideration of the mutual undertakings herein contained, the Parties agree as follows:

BY SIGNING THIS FORM ON BEHALF OF THE CONTRACTOR, THE SIGNATORY CERTIFIES HE/SHE HAS THE AUTHORITY TO BIND THE CONTRACTOR TO THIS CONTRACT.

FOR AND ON BEHALF OF THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY:

FOR AND ON BEHALF OF SOUTHEAST ARIZONA WORKFORCE CONNECTION:

Table with 2 columns and 6 rows for signature and name information.

IN ACCORDANCE WITH A.R.S. § 11-952, THIS CONTRACT HAS BEEN REVIEWED BY THE UNDERSIGNED WHO HAVE DETERMINED THAT THIS CONTRACT IS IN APPROPRIATE FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO EACH RESPECTIVE PUBLIC BODY.

ARIZONA ATTORNEY GENERAL'S OFFICE

By: Assistant Attorney General

By: Public Agency Legal Counsel

Date:

Date:

**1.0 ADES VISION AND MISSION STATEMENTS**

- 1.1 ADES Vision: Opportunity, assistance and care for Arizonans in need.
- 1.2 ADES Mission: The Arizona Department of Economic Security makes Arizona stronger by helping Arizonans reach their potential through temporary assistance for those in need, and care for the vulnerable.

**2.0 PARTIES**

- 2.1 This Intergovernmental Agreement (IGA or Agreement) is between ADES and Southeast Arizona Workforce Connection.

**3.0 TERM OF AGREEMENT**

**3.1 TERM**

The term of this agreement shall have an effective date of 7/1/2015 and end on 6/30/2020 unless otherwise agreed upon by both parties in writing.

**3.2 EXTENSION**

This Agreement may be extended through a written amendment by mutual agreement of the parties.

**3.3 TERMINATION**

- 3.3.1 This Agreement may be terminated by mutual agreement of the parties at any time during the term of this Agreement.

- 3.3.2 Each party shall have the right to terminate this Agreement by hand-delivering to the other party written notice of termination at least thirty (30) days prior to the effective date of said termination.

- 3.3.2.1 It is mutually agreed however that, prior to the termination of this Agreement, reasonable efforts shall be made to discuss options for preserving this Agreement, including amendments if necessary. The ADES reserves the right to terminate the Contract in whole or in part at any time, when in the best interests of the ADES without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the ADES. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the ADES upon demand. The Contractor shall be entitled to receive just and, equitable compensation for work in progress, work completed, and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

**4.0 AMENDMENTS OR MODIFICATIONS**

- 4.1 This Agreement may be amended or modified at any time by mutual agreement. No agent, employee or other representative of either party is empowered to alter any of the terms of the Agreement, unless done in writing and signed by the authorized representative of the respective parties.

- 4.2 Either party shall give written notice to the other party of any non-material alteration that affects the provisions of this Agreement. Non-material alterations that do not require a written amendment are as follows:

- 1. Change of telephone number;
- 2. Change in authorized signatory; and
- 3. Change in the name and/or address of the person to whom notices are to be sent.

**5.0 PURPOSE OF AGREEMENT**

- 5.1 The purpose of this Agreement is to provide Workforce Innovation and Opportunity Act (WIOA) Title 1B services to eligible Youth, Adults, and Dislocated Workers throughout the designated Local Workforce Development Area (LWDA). These services will be provided in accordance with Federal and State regulations and the most current local area plan.

**6.0 MANNER OF FINANCING**

- 6.1 WIOA Title 1B CFDA # 17.258 (Adult): CFDA #17.259 (Youth): CFDA #17.278 (Dislocated Worker)

**6.2 PERIOD OF AVAILABILITY FOR EXPENDITURE OF WIOA FUNDS**

- 6.2.1 The Contractor agrees that Pursuant to Notice of Proposed Rule Making (NPRM) 683.110, funds allocated by a State to a local area under subpart- A sections 128(b) and 133(b), for any Program year are available for expenditure only during that program year and the succeeding program year. Funds that are not expended by a local area in the two-year period described in paragraph (b) (1) of section 128 (b) and 133(b) of the Workforce Innovation and Opportunity Act shall be returned to the State. Funds so returned are available for expenditure by State and local recipients and sub recipients only during the third program

year of availability. These funds may be used for statewide projects, or distributed to other local areas, which had fully expended their allocation of funds for the same program year within the two- year period.

6.2.2 The period of availability for funds allocated under this Contract is identified in Attachment B, Allocation by Program & Fiscal Year. Reimbursement shall not exceed the allocations identified in Attachment B.

6.2.3 All final expenditure reports and cash draw requests for the Local Area Formula Funds shall be submitted per Attachment B. No extensions shall be granted to the requirement to submit the final expenditure and cash draw requests.

### 6.3 **RESCISSION OF FUNDS**

If the Federal Funding Source informs the State that it is rescinding funding from the State and where the State must in turn rescind from a Contractor(s) who may hold one or more Contracts for services funded under the specified Federal Funding Source, the State may take action in the following sequence

6.3.1 Rescind the required amount of funds from unexpended funds to the designated previous period(s) of time.

6.3.2 Rescind the required amount of funds from unexpended funds to the designated current period(s) of time.

6.3.3 Decrease the required amount of funds from funds from a designated future period(s) of time.

## 7.0 **SERVICE DESCRIPTION**

7.1 Program eligibility will be conducted on each applicant prior to the provision of services. Eligibility will include determination of family size, family income for the previous six-month period, educational status, and identification of any barriers or issues that impact attaining and/or retaining employment. Services shall comply with the Workforce Innovation and Opportunity Act as amended and applicable federal and state regulations.

## 8.0 **SERVICES:**

### 8.1 **ADULT AND DISLOCATED WORKERS**

8.1.1 Provided to adults and dislocated workers, as appropriate to meet the individual's needs, may include Career Services and/or Training Services

### 8.2 **RAPID RESPONSE ACTIVITIES:**

8.2.1 Provide to Dislocated Workers upon notification of a pending layoff or plant closure to inform them of available WIOA Title 1B services and other services available in the community to assist them in transitioning from the layoff employer to other employment or training opportunities.

### 8.3 **YOUTH WORKFORCE INVESTMENT ACTIVITIES:**

8.3.1 Provided to WIOA Title 1B eligible youth, who are either in-school, ages fourteen to twenty-one (14-21) (unless an individual with a disability who is attending school under State law) or out-of- school, ages sixteen to twenty-four (16-24). Expenditures for in-school youth shall not exceed 25% of all Youth funds available.

8.4 **THE EXPENDITURES FOR ALL PROGRAMS** will comply with 2 C.F.R. § 200; Public Law, 113-128 of the 113th Congress described as the Workforce Innovation and Opportunity Act and Federal and State regulations and guidelines under the WIOA Title, 1-B Federal grant.

## 9.0 **RESPONSIBILITIES**

9.1 **The ADES and the Contractor agree as follows:**

9.2 **The Contractor shall:**

9.2.1 Provide Workforce Innovation and Opportunity Act (WIOA) Title 1B services to eligible Youth, Adults, and Dislocated Workers throughout the designated Local Workforce Development Area (LWDA). These services will be provided in accordance with Federal and State regulations and the most current local area plan.

9.2.2 Meet all negotiated performance levels for all performance measures contained in the Contractor's Local Area Plan. Failure to meet any of the performance measures contained in the Local Area Plan may result in the Department issuing a Demand for Assurance, which may require a written corrective action plan from the Contractor.

9.2.3 Complete the requirements stated in the Demand for Assurance, including the corrective action plan, by the timeframe prescribed by the Department, failure to complete shall result in the immediate suspension of the Contractor's authority to receive payment under this Contract. Such authority shall

not be reinstated until the Contractor submits, and the Department approves, a revised corrective action plan or submits documentation to show that the issues identified in the Demand for Assurance have been addressed.

- 9.2.4 Comply with the approved Demand for Assurance response. If not in compliance, the Department will proceed with remedies outlined in Section 23.0 up to and including sanctions.
- 9.2.5 Be held responsible for meeting performance measures. If the Contractor fails the same performance measure in two consecutive years, the ADES may impose sanctions up to and including withholding WIOA Title I B funding as outlined in Section 23.0.
- 9.2.6 Send a written notice to the contact in Section 15.2, if it wishes to transfer funds between Adult and Dislocated Workers funds, detailing the amount, up to 100%, of funds that will be transferred and from which funding source the transfer will occur.

### 9.3 **CONFIDENTIALITY:**

- 9.3.1 The Contractor shall observe and abide by all applicable State and Federal Statutes, rules and regulations regarding the use or disclosure of information including, but not limited to, information concerning applicants for and recipients of contract services. To the extent permitted by law, the Contractor shall release information to ADES and the Attorney General's Office as required by the terms of this contract, by law or upon their request.
- 9.3.2 Arizona Address Confidentiality Program: The Contractor shall comply with the requirements of Arizona Address Confidentiality Program, A.R.S. § 41-161 et seq. The ADES will advise the Contractor as to applicable policies and procedures the ADES has adopted for such compliance.

### 10.0 **FINGERPRINTING**

- 10.1 Contractor shall comply with, and shall ensure that all of Contractor's employees, independent contractors, subcontractors, volunteers and other agents comply with, all applicable (current and future) legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks that relate to contract performance.
- 10.2 Applicable legal requirements relating to fingerprinting, certification, and criminal background checks may include, but are not limited, to the following: A.R.S. §§ 36-594.01, 36-3008, 41-1964, and 46-141. All applicable legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks are hereby incorporated in their entirety as provisions of this contract. The Contractor is responsible for knowing which legal requirements relating to fingerprinting, fingerprint clearance cards, certifications regarding pending or past criminal matters, and criminal records checks relate to contract performance.
- 10.3 To the extent A.R.S. § 46-141 is applicable to contract performance or the services provided under this contract, the following provisions apply:
  - 10.3.1 Personnel who are employed by the Contractor, whether paid or not, and who are required or allowed to provide services directly to juveniles or vulnerable adults shall have a valid fingerprint clearance card or shall apply for a fingerprint clearance card within seven working days of employment.
  - 10.3.2 Except as provided in A.R.S. § 46-141, this contract may be cancelled or terminated immediately if a person employed by the Contractor and who has contact with juveniles certifies pursuant to the provisions of A.R.S. § 46-141 (as may be amended) that the person is awaiting trial or has been convicted of any of the offenses listed therein in this State, or of acts committed in another state that would be offenses in this State, or if the person does not possess or is denied issuance of a valid fingerprint clearance card.
  - 10.3.3 The Contractor and subcontractor staff who are required or allowed to provide services directly to juveniles or vulnerable adults shall possess a fingerprint clearance card that meets Level One requirements as described in A.R.S. § 41-1758.07, or, if waiting receipt of their clearance card, shall provide services under direct visual supervision and oversight of an employee who possess a Level One Fingerprint Clearance Card until they are issued a valid fingerprint clearance card that meets the Level One requirements. Contractor and subcontractor staff includes current employees whether paid or not who transfer into a direct service position, volunteers, and new employees whether paid or not.

- 11.0 **BACKGROUND CHECKS FOR EMPLOYMENT THROUGH THE CENTRAL REGISTRY.** If providing direct services to children or vulnerable adults, the following shall apply:

- 11.1 The provisions of A.R.S. § 8-804 (as may be amended) are hereby incorporated in its entirety as provisions of this Contract.
- 11.2 The ADES will conduct Central Registry Background Checks and will use the information contained in the Central Registry as a factor to determine qualifications for positions that provide direct service to children or vulnerable adults for:
1. Any person who applies for a contract with this State and that person's employees;
  2. All employees of a contractor;
  3. A subcontractor of a contractor and the subcontractor's employees; and
  4. Prospective employees of the contractor or subcontractor at the request of the prospective employer.
- 11.3 Volunteers who provide direct services to children or vulnerable adults shall have a Central Registry Background Check, which is to be used as a factor to determine qualifications for volunteer positions.
- 11.4
1. A person who is disqualified because of a Central Registry Background Check may apply to the Board of Fingerprinting for a Central Registry exception pursuant to A.R.S. § 41-619.57. A person who is granted a Central Registry exception pursuant to A.R.S. § 41-619.57 is not entitled to a contract, employment, licensure, certification or other benefit because the person has been granted a Central Registry exception.
  2. Before being employed or volunteering in a position that provides direct services to children or vulnerable adults, persons shall certify on forms that are provided by the ADES whether an allegation of abuse or neglect was made against them and was substantiated. The completed forms are to be maintained as confidential.
- 11.5 A person awaiting receipt of the Central Registry Background Check may provide direct services to ADES clients after completion and submittal of the Direct Service Position certification if:
1. The person is not currently the subject of an investigation of child abuse or neglect in Arizona or another state or jurisdiction; and
  2. The person has not been the subject of an investigation of child abuse or neglect in Arizona, or another state or jurisdiction, which resulted in a substantiated finding.
- The Certification for Direct Service Position is located at:  
<https://www.azdes.gov/InternetFiles/InternetProgrammaticForms/doc/ACY-1287AFORFF.doc>
- 11.6 If the Central Registry Background Check specifies any disqualifying act and the person does not have a Central Registry exception, the person shall be prohibited from providing direct services to ADES clients.
- 11.7 The Contractor shall maintain the Central Registry Background Check results and any related forms or documents in a confidential file for five (5) years after termination of the Contract. The Request for Search of Central Registry for Background Check is located at:  
[www.azdes.gov/InternetFiles/Administrative%20Forms/doc/DES-1076AFORFFS.doc](http://www.azdes.gov/InternetFiles/Administrative%20Forms/doc/DES-1076AFORFFS.doc) - 2013-04-02
- 12.0 MONITORING**  
 The Department will monitor the Contractor and /or subcontractor(s) who shall cooperate in the monitoring of services delivered; facilities; records maintained and fiscal practice. The Contractor must conduct regular oversight and monitoring of its WIOA activities and those of its sub-recipients in accordance with Notice of Proposed Rule Making 683.410 and in accordance with the uniform administrative requirements at 29 CFR parts 95 and 97.
- 13.0 REPORTING REQUIREMENTS**
- 13.1 Per Attachment B, the Contractor shall submit to ADES a final financial closeout packet.
- 13.2 Unless otherwise provided in this Contract, reporting shall adhere to the following schedule: No later than the 30th day following each month in which services were provided during the contract term, the Contractor shall submit financial reports to ADES in the form set forth within the contract.
- 13.3 Submit ETA 9130 Quarterly Report within thirty (30) days after the end of the quarter.
- 13.4 Failure to submit accurate and complete reports by the 30th day following the end of a month may result, at the option of ADES, in retention of payment. Failure to provide such report within 30 days following the end of a month may result, at the option of ADES, in a forfeiture of such payment.

- 13.5 **THE CONTRACTOR SHALL PROVIDE ADES THE FOLLOWING REPORTS:**
- 13.5.1 Contractor Monthly Expenditure and Cash Draw Reports and Detailed Expenditure Breakdown. This is the only format that will be accepted for reporting accrued expenditures.
  - 13.5.2 ETA 9130 Quarterly Reports
  - 13.5.3 All reports are available from the contact information located in 13.6.
- 13.6 All Reports shall be sent to:  
[WIAFiscalReports@azdes.gov](mailto:WIAFiscalReports@azdes.gov)
- 14.0 PAYMENT REQUIREMENTS**
- 14.1 Contractor Monthly Expenditure and Cash Draw Reports and Detailed Expenditure Breakdown shall be submitted by the 30th day of the month following the month services were provided.
- 15.0 NOTICES**
- 15.1 All notices to the Contractor regarding this Agreement shall be sent to the following address:  
 Cochise County  
 ATTN: Vada Phelps  
 900 Carmelita Dr  
 Sierra Vista AZ 85635  
[vphelps@cpic-cas.org](mailto:vphelps@cpic-cas.org)
  - 15.2 All notices to ADES regarding this Agreement shall be sent to the following address:  
 Arizona Department of Economic Security  
 ATTN: WIOA Fiscal Compliance Unit  
 Site Code: 920Z  
 1789 W. Jefferson Street  
 Phoenix, AZ 85007  
 Phone (602) 542-2474
- 16.0 DISPOSITION OF PROPERTY**
- 16.1 Transfer/Surplus of Equipment with a Property Value less than \$5,000  
 Items of equipment with a current per unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency. If property is deemed worthless, documentation must be provided to establish this fact. Property may not be donated to another agency unless it is worthless. An appraiser may establish value. The Equipment Transfer/Surplus Request (J-320) disposition record must be kept for any transaction in accordance with EA/WIOA Section record retention requirements and WIOA Inventory Equipment Database or other internal inventory system annotated accordingly. The Contractor and/or service provider may sell the property and retain the proceeds for use in WIOA programs or divided in accordance with terms of local agency cost sharing agreement.
  - 16.2 **CALCULATION OF "FAIR MARKET VALUE"**  
 The selling price of an item that is sold through auction, advertisement, or a dealer is the fair market value of the item regardless of any prior estimates. An item that is not sold but retained by the Contractor and/or service provider has a fair market value based on similar items that are offered for sale, using the selling price if known.
  - 16.3 **PROPERTY RECORDS RETENTION**  
 All property records must be maintained from date of acquisition, through final disposition. The Contractor and/or service providers must also retain these records for a period of five (5) years from the date of their last expenditure report. If any litigation, claim, negotiation, or audit is started before the expiration of the five (5) year period, all records related to this Agreement must be retained until all findings have been resolved and final action taken or until the end of the regular five (5) year period, whichever is later.
  - 16.4 **INVENTORY RECORDS**  
 The Contractor and/or service providers must maintain accurate inventory records of expendable leased/purchased (value \$2,000.00 to \$4,999.99), and non-expendable leased/purchased equipment \$5,000 or more with WIOA funds. Property records must include:
    - a) Asset Number
    - b) Item Description
    - c) Manufacturer

- d) Serial Number
- e) Acquisition Date
- f) Physical Location
- g) Total Item Cost.

**The Contractor and service providers are required to submit an inventory report for all property leased/purchased with WIOA funds costing more than \$2,000.00 to the EA/WIOA Section, Fiscal Manager by August 1 of each year.**

**16.5 Prior Approval Equipment with a Property Value \$5,000 or more**

Before allocating WIOA funds for any non-expendable tangible property purchase (including software purchases) with a per unit cost of \$5,000 or more, or total purchase cost exceeds \$10,000, the Contractor and/or service provider must complete a "WIOA Pre-Approval of Equipment & Vehicles \$5,000 or More Questionnaire" form that must be signed by the Contractor Director or Designee.

- a) The signed form must be forwarded to the WIOA Section Finance Manager for review, approval or disapproval action.
- b) When an approval decision is rendered, the WIOA Section Finance Manager will return the signed questionnaire to the Contractor Director or Designee. Upon receipt of the signed and approved questionnaire, the Contractor can proceed to purchase the equipment or property.
- c) When a decline decision is rendered, the WIOA Section Finance Manager will specify the reason for disapproval and return the signed questionnaire to the LWIOA Director. The LWIOA may appeal this decision to the WIOA Section Finance Manager.

**17.0 THIRD-PARTY ANTITRUST VIOLATIONS**

The Contractor assigns to ADES any claim for overcharges resulting from antitrust violations, to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

**18.0 APPLICABLE LAW**

18.1 This Contract shall be governed and interpreted by the laws of the State of Arizona. The materials and services supplied under this Contract shall comply with all applicable Federal, State and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

**19.0 ARBITRATION**

19.1 The parties to this Contract agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes.

**20.0 COPYRIGHTS AND OWNERSHIP OF INTELLECTUAL PROPERTY**

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify ADES, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative action that might have the effect of vesting all or part of the Intellectual Property in any entity other than the Department. The Contractor or its subcontractors are not to dispose or distribute any Intellectual Property without the express written authorization of the Department, division, board or commission of the State of Arizona requesting the issuance of this contract shall not disclose the Intellectual Property.

**21.0 AUDIT**

21.1 In accordance with A.R.S. § 35-214, the Contractor shall retain and shall contractually require each subcontractor to retain all data, books and other records ("records") relating to this Agreement for a period of five (5) years after the completion of the Agreement. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, Contractor shall produce the original of any or all such records.

## **22.0 CERTIFICATION REGARDING LOBBYING**

The Contractor certifies, to the best of its knowledge and belief, that:

- 22.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency. This applies to a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant. Including the making of any Federal, loan the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 22.2 If any funds other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 22.3 The Contractor shall require that the language of this certification be included in the award documents for all sub- awards at all tiers (including subcontracts, sub-grants, and contract under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 22.4 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

## **23.0 SANCTIONS AND CORRECTIVE ACTIONS**

- 23.1 The Department may issue Demand for Assurance notices to the Contractor for failure to comply with any of the conditions, requirements or clauses contained in this Agreement. This Demand for Assurance shall include the citation from the Agreement that the Department requires the Contractor to remedy, the required time frame for a response from the Contractor, what required documents shall be sent with the response and to whom the response shall be sent. Failure to comply with the requirements set forth in the Demand for Assurance, and any corrective action agreed to by the Department, may result in the actions outlined in Section 23.2.1 and 23.2.2
- 23.2 Pursuant to NPRM 683.700, the Department may impose sanctions and corrective actions on recipients and sub recipients of WIOA grant funds as follows:
  - 1. Except for actions under WIOA section 188(a) the Department uses the initial and final determination procedures outlined in NPRM 683.440 to impose a sanction or corrective action. To impose a sanction or corrective action for a violation of WIOA section 188(a) ADES will use the procedures set forth in that regulatory part.
  - 2. The Department may impose sanctions or corrective action for noncompliance with the uniform administrative requirements set forth under section 184(b) (1) and NPRM 683.700 Sanctions or corrective action will be applied for substantial violations of WIOA statutory and regulatory requirements, if the Governor fails to promptly take the actions specified in WIOA sections 184(b)(1), the Grant Officer may impose such actions directly against the local area. The Grant Officer may also impose a sanction directly against a sub recipient, as authorized in section 184(d) (3) of the Act.
- 23.3 Pursuant to NPRM 683, the Department shall impose fiscal sanctions if a local area fails the same performance measure(s) in three or more consecutive years. The sanction shall be applied to the area of funding (i.e. Adult, Youth Dislocated Worker or Rapid Response) in which the failed performance measure(s) applies. Sanctions shall follow the Sanction Schedule (Attachment A) and shall be applied after final performance is reported in October of each contract year.

Sanctions collected shall be held by the Department and the Contract may receive the sanctioned funds if the performance for the failed measure(s) is rectified and the local area passes the performance measure in the next reporting cycle (i.e. October of the following year). If the local area does not rectify performance in the next reporting cycle, the funds shall revert to the Department.

## **24.0 CLEAN AIR ACT & CLEAN WATER ACT**

As the Contractor you must be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C.1857(h)),section 508 of the Clean Water Act (33 U.S.C. 1368) Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

**25.0 ENERGY POLICY AND CONSERVATION ACT**

As the Contractor, you must adhere to the standards and policies relating to energy efficiency; which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

**26.0 COPELAND “ANTI-KICKBACK” ACT**

As the Contractor to this Agreement, you are expected to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. § 874) as supplemented in the Department of Labor regulations (29 CFR part 3). This regulation applies to all contracts and sub grants for construction or repair.

**27.0 DAVIS-BACON ACT**

As the Contractor to this Agreement, you must comply with the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) when required by Federal grant program legislation.

**28.0 DEBT COLLECTION AND AUDIT RESOLUTION**

As the Contractor to this Agreement, you must comply with P.L. 105-220 Sections 128, 133, and 184; 20 CFR Part 652, Subpart D,E and G; 20 CFR Part 667 Subparts D – H; 29 CFR Parts 95, 96, 97, and 99; OMB Circular A-21. As the Contractor to this Agreement, you must comply with 2 CFR 200 and all subparts. As the Contractor to this Agreement, you are required to adhere to Federal Acquisition Regulation 97-03 Part 31; ADES Policies 1-47-01 and 1-47-08.

28.1 Among the required controls specified in NPRM 683.750 is the process for collecting debts.

NPRM 683.410 states it is the responsibility of the Contractor, sub-grantee, sub-recipient and/or service provider to conduct regular oversight and monitoring of its WIOA activities to determine whether expenditures made against the cost categories are within the cost limitations specified in WIOA laws and regulations. NPRM 683.710 states that:

- (a) The Contractor is responsible for all funds under its grant(s):
- (b) The political jurisdiction(s) of the chief elected official(s) in a Local Workforce Development Area is liable for any misuse of the WIOA grant funds allocated to the local area under WIOA sections 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability. The Arizona Department of Economic Security (ADES) holds all direct recipients (Contractors) liable for all expenditures of funds.

**29.0 RIGHT TO ASSURANCE**

If the Department in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of “Days” specified in the demand may, at the Department’s option be the basis for terminating the contract under the rights and remedies available by law or provided by this contract.

**30.0 REVIEW**

This Agreement shall be reviewed at any time at the written request of either party.

**31.0 CONFLICT OF INTEREST**

31.1 In accordance with A.R.S. § 38-511, the State may within three years after execution cancel the Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State, at any time while the Agreement is in effect, becomes an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party to the Agreement with respect to the matter of the Agreement.

**32.0 DATA SHARING AGREEMENT**

32.1 If determined by the Department that sharing of confidential data will occur with the Contractor, the Contractor shall complete the ADES Data Sharing Request Agreement and submit the completed

Agreement to the ADES Program Designated Staff prior to any work commencing or data shared. A separate Data Sharing Request Agreement shall be required between the Contractor and each ADES Program sharing confidential data.

**33.0 E-VERIFY**

33.1 In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A.

**34.0 FEDERAL IMMIGRATION AND NATIONALITY ACT**

34.1 By entering into the Agreement, the Contractor warrants compliance with the Federal Immigration and Nationality Act. (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Agreement. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Agreement. I-9 forms are available for download at USCIS.GOV.

34.2 The State may request verification of compliance for any Contractor or subcontractor performing work under the Agreement. If the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of the Agreement for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

**35.0 INDEMNIFICATION**

**35.1 INDEMNIFICATION FOR CONTRACTOR:**

35.1.1 Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

**35.2 INDEMNIFICATION FOR SUBCONTRACTOR**

35.2.1 In addition, Contractor shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

**36.0 INSURANCE REQUIREMENTS**

**361 INSURANCE REQUIREMENTS FOR GOVERNMENTAL PARTIES TO AN IGA:**

361.1 None.

**36.2 INSURANCE REQUIREMENTS FOR ANY CONTRACTORS USED BY A PARTY TO THE INTERGOVERNMENTAL AGREEMENT:**

(Note: this applies only to Contractors used by a governmental entity, not to the governmental entity itself.) The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the governmental entity or Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, his agents, representatives, employees or subcontractors, and

Contractor and the governmental entity are free to purchase additional insurance.

1. **Minimum Scope and Limits of Insurance:** Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to **include coverage for sexual abuse and molestation.**
- b. The policy shall be endorsed to include the following additional insured language: **“The State of Arizona and the Department of Economic Security shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor”.**  
(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)
- c. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: **“The State of Arizona and the Department of Economic Security shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor”.**
- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor

(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)

3. **Worker's Compensation and Employers' Liability**

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$ 500,000
  - Disease – Each Employee \$ 500,000
  - Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

2. **Additional Insurance Requirements:** The policies shall contain, or be endorsed to contain, the following provisions:
    1. The State of Arizona and the Department of Economic Security, wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Agreement.
    2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
    3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
  3. **Notice of Cancellation:** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to the **Department of Economic Security, Office of Procurement, 1789 W. Jefferson St. Site Code 805Z, Phoenix, AZ 85007** and shall be sent by certified mail, return receipt requested.
  4. **Acceptability of Insurers:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
  5. **Verification of Coverage:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.  
All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of Agreement.
- All certificates required by this Agreement shall be sent directly to **Department of Economic Security, Office of Procurement, 1789 W. Jefferson St. Site Code 805Z, Phoenix, AZ 85007 unless the Reporting Requirements specifies otherwise.** The State of Arizona **contract number and contract description shall be noted or referenced on the certificate of insurance.** The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**
6. **Subcontractors:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.
  7. **Approval:** Any modification or variation from the insurance requirements in this Agreement shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal amendment to the Agreement, but may be made by administrative action.
  8. **Exceptions:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

### 37.0 IT 508 COMPLIANCE

- 37.1 Unless specifically authorized in the Agreement, any electronic or information technology offered to the State of Arizona under this Agreement shall comply with A.R.S. § 41-3531 and § 3532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

### 38.0 NON-AVAILABILITY OF FUNDS

38.1 In accordance with ARS § 35-154, every payment obligation of the State under the Agreement is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event his provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

**39.0 NON-DISCRIMINATION**

39.1 The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

**40.0 OFFSHORE PERFORMANCE OF WORK PROHIBITED**

40.1 Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers

**41.0 RIGHT OF OFFSET**

41.1 The Department shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the Department, or damages assessed by the Department concerning the Contractor's non-conforming performance or failure to perform the Agreement, including expenses, costs and damages.

**42.0 CULTURALLY RELEVANT AND LINGUISTICALLY APPROPRIATE**

42.1 The Contractor shall ensure that all services provided are culturally relevant and linguistically appropriate to the population to be served.

**43.0 ATTACHMENTS**

43.1 The following list of attachments constitutes an integral part of subject Agreement.

43.1.1 Attachment A – Sanction Schedule

43.1.2 Attachment B – WIOA Allocation by Program and Fiscal Year