

CONTRACT FOR CUSTOMIZED TRAINING
BETWEEN
WASHINGTON STATE BOARD FOR COMMUNITY & TECHNICAL COLLEGES
AND
[BUSINESS]
AND
[TRAINING INSTITUTION]

THIS AGREEMENT is made and entered into by and between the Washington State Board for Community & Technical Colleges, P.O. Box 42495, Olympia, WA 98504-2495, hereinafter referred to as the “State Board;” [Business], [Address], hereinafter referred to as the “Business;” and [Training Institution], [Address], hereinafter referred to as the “Training Institution.”

IT IS THE PURPOSE OF THIS AGREEMENT to set forth the terms and conditions by which the Business, the Training Institution, and the State Board will engage in a customized employee training project as made possible by Washington Substitute Senate Bill 5616 as enacted by the 2009 Washington State Legislature (Laws of 2009, chapter 296).

THEREFORE, IT IS MUTUALLY AGREED THAT:

TERMS AND CONDITIONS

General terms and conditions are covered in Attachment A.

STATEMENT OF WORK

The Business and Training Institution shall perform the activities set forth in Attachment B, attached hereto and incorporated herein, and shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of this Agreement.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on [contract start-date] and be completed on or before [contract end date (date that final payment will be complete)], unless terminated sooner as provided herein.

PAYMENT

The State Board shall pay the Training Institution an amount not to exceed \$[contract value] for the performance of all things necessary for or incidental to work set forth in Attachment B. Compensation

for deliverables provided under this Agreement shall be based on the costs set forth in Attachment B. Funding for this project is provided from state appropriations.

The Business shall repay the State Board as set forth in Attachment C.

Reporting requirements are addressed in Attachment D.

BILLING PROCEDURE

The Training Institution shall submit properly completed invoices at least quarterly but not more than monthly to the attention of: Customized Training Program, SBCTC, P.O. Box 42495, Olympia, WA 98504-2495. Invoices shall be submitted within 30 days of the end of a billing period. Payment to the Training Institution for approved and completed deliverables will be made by the State Board within 30 days of receipt of the invoice.

Upon expiration of the Agreement, any claim or payment not already made shall be submitted within 30 days after the training end-date. The final invoice shall be marked as "final," certifying that the Training Institution has completed all requirements of this Agreement.

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly document the performance of all service(s) described herein, to include student records and evidence of work completed. These records shall be subject to inspection, review or audit by personnel of all parties, other personnel duly authorized by all parties, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six (6) years after dispersal of funds, the termination or expiration of the Agreement, or the resolution of litigation or audits related to the Agreement, whichever is latest. The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to another party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third party not already a party to this Agreement without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

DISCLOSURE OF INFORMATION

The Business agrees that information supplied in the Customized Training Application, information supplied in this contract, information supplied in the Trainee Report, and information supplied in the Job Growth Report can be shared by the State Board with the Department of Revenue and the Washington State Legislature.

RIGHT OF INSPECTION

The Business shall provide right of access to its facilities to the State Board, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

AGREEMENT ALTERATIONS AND AMENDMENTS

It is mutually agreed and understood that: (i) no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto; and (ii) no oral understanding or agreement not incorporated herein nor alternations or variations of the terms hereof, unless made in writing between the parties hereto, shall be binding.

GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable state and federal statutes and rules;
2. Washington Substitute Senate Bill 5616 as enacted by the 2009 Washington State Legislature (Laws of 2009, chapter 296).
3. Special terms and conditions as contained in this basic contract instrument;
4. General Terms and Conditions;
5. Customized Training Program Guidelines; and
6. Any other provisions of the Agreement, including materials incorporated by reference.

CONTRACT MANAGEMENT

The program manager for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

State Board: Carol Melby, Program Administrator, SBCTC, P.O. Box 42495, Olympia, WA 98504-2495, (360) 704-4340, e-mail: cmelby@sbctc.ctc.edu.

Business: [Name], [Position], [Business Name], [Address], [City], WA [Zip], [Telephone], [E-mail], [Uniform Business Identifier (UBI) number]

Training Institution: [Name], [Position], [Business Name], [Address], [City], WA [Zip], [Telephone], [E-mail].

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

[Business]		[Training Institution]	
_____		_____	
[Authorizing Official]		[Authorizing Official]	
_____		_____	
Title	Date	Title	Date

**Washington State Board for
Community and Technical Colleges**

Charles N. Earl

Executive Director

Title Date

APPROVED AS TO FORM on the ____ day
of _____, 2006.

David Stolier, Senior Assistant Attorney General
State of Washington

ATTACHMENT A

GENERAL TERMS AND CONDITIONS

DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "STATE BOARD" shall mean the Washington State Board for Community & Technical Colleges
- B. "EXECUTIVE DIRECTOR" shall mean the Executive Director of the STATE BOARD, and/or the delegate authorized in writing to act on the Executive Director's behalf.
- C. "BUSINESS" shall mean the organization seeking employee training.
- D. "TRAINING INSTITUTION" shall mean the community or technical college or private career school providing training and other deliverables described in Attachment B.
- E. "SUBCONTRACTOR" shall mean one not in the employment of the TRAINING INSTITUTION, who is performing all or part of those services under this contract under a separate contract with the TRAINING INSTITUTION. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

Access to Data

The BUSINESS and TRAINING INSTITUTION shall provide access to data generated under this contract to STATE BOARD, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost.

Advance Payments Prohibited

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the STATE BOARD.

Amendments

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, Also Referred to as the "ADA" 28 CFR Part 35

The BUSINESS and TRAINING INSTITUTION must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

Assignment

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the BUSINESS and TRAINING INSTITUTION without prior written consent of the all parties.

Attorneys' Fees

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

Conflict of Interest

Any person hired by any state agency is subject to the Ethics in Public Service Act, Chapter 42.52. RCW. Notwithstanding any determination by the Executive Ethics Board or other tribunal, the STATE BOARD may, by written notice to the BUSINESS terminate this contract if it is found after due notice and examination by the STATE BOARD that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the BUSINESS in the procurement of, or performance under this contract.

Disallowed Costs

The TRAINING INSTITUTION is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its SUBCONTRACTORS.

Disputes

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the EXECUTIVE DIRECTOR.

1. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the BUSINESS name, address, and contract number; and
 - Be mailed to the EXECUTIVE DIRECTOR and the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the EXECUTIVE DIRECTOR and the requester within five (5) working calendar days.
3. The EXECUTIVE DIRECTOR shall review the written statements and reply in writing to both parties within 10 working calendar days. The EXECUTIVE DIRECTOR may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

Governing Law

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.

Indemnification

Each party to this Agreement shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

Independent Capacity of the BUSINESS

The parties intend that an independent contractor relationship will be created by this contract. The BUSINESS and its employees or agents performing under this contract are not employees or agents of the STATE BOARD or TRAINING INSTITUTION. The BUSINESS will not hold itself out as or claim to be an officer or employee of the STATE BOARD or TRAINING INSTITUTION or of the state of Washington by reason hereof, nor will the BUSINESS make any claim of right, privilege or benefit that would accrue to such employee under law.

Industrial Insurance Coverage

The BUSINESS shall comply with the provisions of Title 51 RCW, Industrial Insurance.

Licensing, Accreditation and Registration

The BUSINESS shall comply with all applicable local, state and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

Limitation of Authority

Only the EXECUTIVE DIRECTOR or his/her delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the EXECUTIVE DIRECTOR.

Nondiscrimination

During the performance of this contract, the BUSINESS shall comply with all federal and state nondiscrimination laws, regulations and policies.

Privacy

Personal trainee information shall be protected against unauthorized use, disclosure, modification or loss by the TRAINING INSTITUTION and the STATE BOARD.

Publicity

The BUSINESS consents to allow the STATE BOARD and the TRAINING INSTITUTION to use its name or its written testimony and/or comments pertaining to this training, for purposes of public information and marketing.

The BUSINESS agrees to submit to the STATE BOARD all advertising and publicity matters relating to this contract wherein the STATE BOARD'S name is mentioned or language used from which the connection of the STATE BOARD'S name may, in the STATE BOARD'S judgment, be inferred or implied. The BUSINESS agrees not to publish or use such advertising and publicity matters without the prior written consent of the STATE BOARD.

Registration with Department of Revenue

The BUSINESS shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

Savings

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the STATE BOARD may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the STATE BOARD'S discretion under those new funding limitations and conditions.

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 the contract.

Site Security

While on TRAINING INSTITUTION premises, BUSINESS, its agents, employees or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

Subcontracting

In no event shall the existence of the subcontract operate to release or reduce the liability of the BUSINESS to the STATE BOARD for any breach in the performance of the BUSINESS'S duties. This clause does not include contracts of employment between the BUSINESS and personnel assigned to work under this contract.

Termination for Cause

In the event the STATE BOARD or TRAINING INSTITUTION determines the BUSINESS has failed to comply with the conditions of this contract in a timely manner, the STATE BOARD has the right to suspend or terminate this contract. Before suspending or terminating the contract, the TRAINING INSTITUTION shall notify the BUSINESS in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the BUSINESS shall be liable for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

The STATE BOARD reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the BUSINESS from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the BUSINESS or a decision by the STATE BOARD to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the BUSINESS: (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 the STATE BOARD provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

Termination for Convenience

Except as otherwise provided in this contract, the STATE BOARD may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the STATE BOARD 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 termination.

Termination Procedures

Upon termination of this contract, the STATE BOARD, in addition to any other rights provided in this contract, may require the BUSINESS to deliver to the TRAINING INSTITUTION 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" clause shall apply in such property transfer.

After receipt of a notice of termination, and except as otherwise directed by the EXECUTIVE DIRECTOR, the TRAINING INSTITUTION shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Transfer title to the BUSINESS and deliver in the manner, at the times, and to the extent directed by the EXECUTIVE DIRECTOR any property which, if the contract had been completed, would have been required to be furnished to the BUSINESS;
4. Take such action as may be necessary, or as the EXECUTIVE DIRECTOR may direct, for the protection and preservation of the property related to this contract, which is in the possession of the BUSINESS and in which the TRAINING INSTITUTION has or may acquire an interest.

Treatment of Assets

1. Title to all property furnished by the TRAINING INSTITUTION shall remain in the TRAINING INSTITUTION. Title to all property furnished by the BUSINESS shall remain in the BUSINESS.

Title to other property, the cost of which is to be paid by the BUSINESS under this contract, shall pass to and vest in the BUSINESS upon reimbursement in whole of the cost thereof by the BUSINESS to the STATE BOARD .

2. Any property of the TRAINING INSTITUTION furnished to the BUSINESS shall, unless otherwise provided herein or approved by the TRAINING INSTITUTION, be used only for the performance of this contract.
3. The BUSINESS shall be responsible for any loss or damage to property of the TRAINING INSTITUTION that results from the negligence of the BUSINESS or that results from the failure on the part of the BUSINESS to maintain and administer that property in accordance with sound management practices.
4. If any TRAINING INSTITUTION property is lost, destroyed or damaged, the BUSINESS shall immediately notify the TRAINING INSTITUTION and shall take all reasonable steps to protect the property from further damage.
5. The BUSINESS shall surrender to the TRAINING INSTITUTION all property of the TRAINING INSTITUTION prior to settlement upon completion, termination or cancellation of this contract.
6. All reference to the BUSINESS under this clause shall also include BUSINESS'S employees, agents or SUBCONTRACTORS.

Waiver

Waiver of any default or breach shall not be deemed 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 and signed by authorized representative of the STATE BOARD.

ATTACHMENT B
STATEMENT OF WORK

[Instructions and clarifications are placed in italics and brackets and will be deleted prior to placement in the final contract.]

I. PROJECT DESCRIPTION

- a. Description of the scope of work:** *[Please briefly summarize the entire project. Include pre-training, training, and post-training deliverables.]*
- b. Summary of project objectives:** *[Please describe the intended objectives.]*
- c. Training end-date:** *[Please make this date the 28th of any month.]*

II. TRAINING ELEMENTS

[For each training element (module, course, or class), provide information a. through k. Copy, paste and complete a. through k. for each new element title (topic or course taught). Each of these elements should then be listed as a deliverable in section V. Project Deliverables, Costs and Timeframe.]

- 1. Title:** *[class, unit, or module]*
 - a. Element CIP:** *[closest match]*
 - b. Short description:**
 - c. Training delivery method:** *[classroom, instructor-led, online]*
 - d. Delivery site(s):** *[employer's site; off-site training location; etc.]*
 - e. Audience:** *[existing or new employees]*
 - f. Number of trainees:**
 - g. Total training hours per trainee:**
 - h. Explanation of training start- and end-dates, as applicable:**
 - i. Instructor** *[or instructor qualifications]:*
 - j. Supplies and materials to be provided by training institution:**
 - k. Supplies and materials to be provided by business:**

III. SUPPORT ACTIVITIES

[Please provide additional information on any activities that are not mentioned above. This may include needs assessment, interviews, meetings, pre-testing activities, program evaluation, skills testing, outcome evaluation, etc.]

IV. COPY RIGHT PROVISIONS

[Ownership of the curriculum is to be covered here in Attachment B of the contract. Curriculum that is proprietary to the business will understandably be owned by the business. Ownership of curriculum that is newly developed for this company could be jointly owned, particularly if both parties are able to use it again. Colleges retain ownership of their pre-existing curriculum and are advised to retain ownership of new curriculum that could be used in future applications, e.g. basic supervisory skills or customer service skills.]

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V. PROJECT DELIVERABLES, COSTS, AND TIMEFRAME

[The matrix below provides guidelines for organizing your training project by identifying the specific deliverables that will occur before, during, and after the actual training. Blank lines can be deleted. By the same token, please add lines for deliverables that are not listed here. If you provide a deliverable but can't assign a specific cost to it, please include it in the list and note the cost as "included in Module costs" or elsewhere.]

Check ✓ Deliverables			
PRE-TRAINING Deliverables	Cost of each deliverable	Brief Description of PRE-TRAINING	Time Frame
<input checked="" type="checkbox"/> Needs Assessment			
<input checked="" type="checkbox"/> Curriculum Development	<i>Sample: Included in module costs</i>		
<input type="checkbox"/> Other			
Subtotal Required:	\$ <u>0.00</u>		
TRAINING Deliverables	Cost of Each Deliverable	Brief Description of TRAINING	Month(s) of Delivery
<input checked="" type="checkbox"/> Module 1 <i>[use own terms]</i>			
<input type="checkbox"/>			
<input type="checkbox"/>			
<input type="checkbox"/>			
<input type="checkbox"/>			
Subtotal Required:	\$ <u>0.00</u>		
POST-TRAINING Deliverables		Brief Description of POST-TRAINING	Time Frame
<input type="checkbox"/> Program Evaluation			
<input type="checkbox"/> Other			
Subtotal Required:	\$ <u>0.00</u>		
Total Cost of Training Program to Business:	\$ <u>0.00</u>		Training Program End Date: 00/00/2011

ATTACHMENT C

REPAYMENT

The business must repay the full amount of the Training Program as follows:

- pay one-quarter (25 percent) of the total cost upon completion of the training—training end-date—to the SBCTC.
- pay the remaining three-quarters (75 percent) of the total cost within 18 months on a prorated basis.
- In calendar years 2009 and 2010 the business may opt to delay the beginning of the repayment phase by no more than 18 months. (This should be determined upfront and repayment schedule designed accordingly.)

Upon execution of this contract, the Business will be placed on a payment plan that is synchronized to the frequency at which it pays state B&O taxes to the Washington Department of Revenue. In other words, if the business identifies itself as a monthly taxpayer on the Customized Training Program Application, it will be invoiced on a monthly basis by the State Board. If the business identifies itself as a quarterly taxpayer on the Customized Training Program Application, it will be invoiced on a quarterly basis by the State Board.

Timely Payment: Payments are due within 30 days of the date of invoice. Interest of 1 percent per month shall accrue from the original due date on all accounts more than 60 days in arrears.

Default: A business more than 90 days in arrears on payment of amounts due will be deemed in default. Any remaining amount of the total cost of the training program becomes immediately due and payable.

Payment Schedule:

(To be inserted by SBCTC for each unique contract – schedule includes invoice and payment dates, payment amounts. Payment schedule will be monthly for monthly taxpayers, quarterly for quarterly taxpayers. In the event that the business is an annual taxpayer, payment schedule will be quarterly.)

ATTACHMENT C

Insert *Repayment Schedule* here.

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ATTACHMENT D
REPORTING REQUIREMENTS

TERMS FOR REPORTING NUMBER OF TRAINEES (BY THE BUSINESS)

Upon completion of activities covered by the contract the Training Institution and the Business shall jointly submit a **Trainee Report** to the State Board documenting the actual, unduplicated count of trainees trained under the project. The data contained in the **Trainee Report** will be used to establish the Business's eligibility for claiming a business and occupation tax credit.

The **Trainee Report** form is attached to the *Customized Training Program Guidelines*.

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