



PART II - TERMS AND CONDITIONS

1. AVAILABILITY OF FUNDS

- a. Payments pursuant to this contract are to be made only from monies made available to the Oklahoma Department of Commerce (ODOC) by the State of Oklahoma for the program under which this contract is awarded. Notwithstanding any other provisions, payments to the Contractor by ODOC are subject to the availability of such funds to ODOC, as determined by State action and/or law. ODOC may take any action necessary in accordance with such determination.
- b. Funds for this contract are paid to ODOC in equal increments of 1/12th of the contract amount as approved by the Director of State Finance. The funds for this contract are available for disbursement after services are rendered pursuant to 74 O.S. § 85.44B. Claims for funds cannot exceed the actual expenditures or the cumulative 1/12th monthly allocation to date for this contract. Claims exceeding the 1/12th monthly allocation will be rejected by ODOC and returned to the contractor.
- c. ODOC shall have the right to terminate this contract if the Legislature fails to allocate sufficient funds to maintain this contract or, in the alternative, to reduce the compensation clause proportionately to reflect the reduction in funding allocated to this contract.
- d. The Contractor will distribute said State Funds to eligible CENA sites only.

2. MODIFICATION (AMENDMENT)

- a. This contract is subject to such modification as may be required by State law. Any such modification may be done unilaterally by ODOC.
- b. Except as otherwise provided in this contract, the work and services to be performed and the total contract amount may be modified only upon written agreement of the duly authorized representatives of both parties.
- c. Revisions to the contract and the attached budget, which is a part of this contract, must be approved in writing in advance by ODOC.
- d. A waiver by ODOC of any provision of this contract must be in writing and signed by the Director of ODOC or his designee.

3. ODOC

ODOC will provide funding for the project up to the total contract amount.

4. CONTRACTOR

- a. The Contractor will provide the necessary personnel, facilities, supplies, equipment and/or related resources and skills to accomplish the project in accordance with the terms and conditions of this contract. The Contractor agrees to perform those duties, obligations and representations contained in its application and to



be bound by the provisions of its application and all amendments thereto submitted to and accepted by ODOC in contemplation of this contract, said application being incorporated herein and made a part hereof by reference. Any conflict between said application and the provisions of this contract shall be controlled by the provisions of Part II of this contract.

- b. All of the work and services required shall be performed by the Contractor or under the Contractor's supervision, and all personnel engaged therein must be fully qualified and authorized under State and local law to perform such work and services.
- c. In no event will any subcontractor incur obligation on the part of ODOC.

5. EMPLOYEE BENEFITS

The Contractor has full responsibility for payment of Workers' Compensation insurance, unemployment insurance, social security, State and federal income tax, and any other deductions required by law for its employees.

6. CERTIFICATIONS BY CONTRACTOR

- a. The Contractor expressly agrees to be solely responsible to ensure that the use of monies received under this contract complies with all State statutes and other legal authority, including ODOC policies and procedures that affect the use of said monies. The Contractor recognizes that it is responsible for assuring financial and programmatic compliance by its subcontractors.
- b. The Contractor specifically certifies and assures that:
 - (1) It will adhere to State regulations pertaining to non-discrimination.
 - (2) It will not compel any county, city or other political subdivision of the State of Oklahoma to be a member of or participate in said Substate District.
 - (3) It will maintain fiscal controls and accounting procedures adequate to ensure the proper disbursement and accounting for all funds received pursuant to this program.
- c. The Contractor certifies that it is in compliance with 25 O.S. §1313(B).

7. HOLD HARMLESS CLAUSE

The Contractor shall, within limitations placed on such entities by State law, save harmless the State of Oklahoma, its agents, officers and employees from all claims and actions and all expenses defending same that are brought as a result of any injury or damages sustained by any person or property in consequence of any act or omission by the Contractor. The Contractor shall, within limitations placed on such entities by State law, save harmless the State of Oklahoma, its agents, officers, and employees from any claim or amount recovered as a result of infringement of patent, trademark or copyright or from any claim or



amounts arising or recovered under Workers' Compensation law or any other law. In any agreement with any subcontractor or any agent for the Contractor, the Contractor will specify that such subcontractors or agents shall hold harmless the State of Oklahoma, its agents, officers and employees for all the hereinbefore-described expenses, claims, actions or amounts recovered.

8. POLITICAL ACTIVITY

- a. No portion of the contract funds may be used for any political activity or to further the election or defeat of any candidate for public office.
- b. No portion of the contract funds may be used for lobbying activities.

9. NO-CONFLICT COVENANT

The Contractor covenants that no members or employees of any governing board of the Contractor have any interest, direct or indirect, and that none shall acquire any such interest, that would conflict with the full and complete execution of this contract. The Contractor further covenants that in the performance of this contract no person having any such interest will be employed.

10. PUBLICATIONS AND OTHER MATERIALS

- a. No material produced in whole or in part under this contract shall be subject to copyright in the United States or any other country. ODOC shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this contract.
- b. Any publication or other material produced as a result of this contract shall include in a prominent location near the beginning the following statement:

This (type of material) was financed in whole or in part by funds from the State of Oklahoma as administered by the Oklahoma Department of Commerce.

11. COMPENSATION TO CONTRACTOR

- a. Funds made available pursuant under this contract shall be used only for expenses incurred during the period funded as specified in Part I for the purposes and activities approved and agreed to by ODOC. No contract funds may be used for expenses incurred either prior to or after the time period specified.
- b. Payment will be made by ODOC only in the form of reimbursement for expenditures incurred during the contract period. Contractor shall submit an expenditure report with all requests for payment.
- c. If a question arises as to the validity of any claim made under this contract, ODOC may suspend further payments until the question is resolved. The decision of ODOC to allow or disallow any claim shall prevail.



12. TRAVEL AND PER DIEM

All payments for travel-related costs, including per diem, incurred in performing this contract shall be by reimbursement only and shall be in accordance with the State Travel Reimbursement Act, 74 O.S. 500.1, et seq.

13. PROCUREMENT

Funds expended for the program shall be exempt from the requirements of the Central Purchasing Act, §§85.1. et seq., of Title 74 of the Oklahoma Statutes.

14. RECORDS, REPORTS, DOCUMENTATION

- a. The Contractor shall maintain records and accounts, including property, personnel and financial records that properly document and account for all project funds. Some specific types and forms of records may be required by ODOC.
- b. The Contractor shall document and report, in a manner prescribed by ODOC, all other funds and in-kind activities used as "match" in conjunction with funds provided by ODOC.
- c. The Contractor shall furnish ODOC with narrative reports, statistical reports and financial reports related to this contract in the forms and at such times as may be required by ODOC.
- d. The Contractor shall retain all books, documents, papers, records and other materials involving all activities and transactions related to this contract for at least five (5) years from the date of submission of the Final Expenditure Report or until all audit findings have been resolved, whichever is later, or as otherwise required by law. The Contractor shall, as ODOC deems necessary, permit authorized representatives of ODOC and the State of Oklahoma to have full access to and the right to fully examine all such materials.
- e. The Contractor shall submit an annual progress report at closeout of the contract.

15. CLOSING OUT OF PERIOD FUNDED

- a. The Contractor shall promptly return to the Department of Commerce any funds received under this contract that are not obligated as of the final date of the period funded. Funds shall be considered obligated only if goods and services have been received as of the final date of the period funded.
- b. The Contractor shall submit closeout documents no later than sixty (60) days after the final date of the period funded. Said closeout documents may be accompanied by the Final Expenditure Report.
- c. When actual expenditures total less than the contract amount, the contract will automatically be de-obligated to the actual expenditures as shown in the closeout documents.

16. AUDITING, DISALLOWED COSTS



- a. The Contractor shall comply with ODOC's Audit Policies and Audit Procedures, which are incorporated herein and made a part hereof.
- b. The cost of the audit of contract funds may be paid from this contract.
- c. In the event the audit results in the determination that the Contractor has expended contract funds on unallowable costs, the Contractor shall reimburse ODOC in full for all such costs.

17. INTERPRETATION, REMEDIES

- a. In the event the parties fail to agree on changes or interpretations of this contract, the decision of ODOC shall prevail.
- b. In the event of any disagreement between the Contractor and ODOC relating to the technical competence of the work and services being performed and its conformity to the requirements of this contract, the decision of ODOC shall prevail.
- c. Neither forbearance nor payment by ODOC shall be construed to constitute waiver of any remedies for any default or breach by the Contractor that exists or occurs later.

18. TERMINATION OR SUSPENSION

- a. This contract may be terminated or suspended in whole or in part at any time by written agreement of the parties.
- b. This contract may be terminated or suspended by ODOC, in whole or in part, for cause, after notice and an opportunity for Contractor to present reasons why such action should not be taken. Procedures for such a process shall be in accordance with the General Rules of Practice and Procedure of the Department. Grounds constituting cause include but are not limited to:
 - (1) Contractor fails to comply with provisions of this contract or with any applicable laws, regulations, guidelines or procedures, including ODOC policies and issuances, or is unduly dilatory in executing its commitments under this contract.
 - (2) Purposes for the funds have not been or will not be fulfilled or would be illegal to carry out.
 - (3) Contractor has submitted incorrect or incomplete documentation pertaining to this contract.
 - (4) The Contractor is unduly dilatory in executing its commitments under a prior contract with ODOC, including, but not limited to, submission of any audits due, resolution of audit findings and monitoring results.
- c. In the event of termination or suspension, the Contractor shall be entitled to payment for otherwise valid and allowable obligations incurred in good faith prior to notice of such action and to reimbursement for reasonable and necessary expenses. The



Contractor shall reduce to the minimum possible all obligations, prepaid expenses and other costs.

- d. The Contractor shall not be relieved of liability to ODOC for damages sustained by ODOC by virtue of any breach of this contract by Contractor. ODOC may withhold payments due under this contract pending resolution of the damages.

19. SEVERABILITY CLAUSE

If any provision under this contract or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this contract or its application that can be given effect without the invalid provision or application.