

STATE OF COLORADO
Office of Economic Development & International Trade
Grant Agreement
with
Insert Grantee's Full Legal Name

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1. PARTIES

This Grant Agreement (hereinafter called “Grant”) is entered into by and between Insert Grantee's Name (hereinafter called “Grantee”), and the STATE OF COLORADO acting by and through the Office of Economic Development & International Trade (hereinafter called the “State or OEDIT”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, And Approval

Authority to enter into this Grant exists in CRS 24-48.5-101 et seq. and funds have been budgeted, appropriated and otherwise made available pursuant to the “Jobs and Growth Tax Relief Reconciliation Act of 2003” (Public Law 108-27) and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

An appropriation was made to operate a Small Business Development Center Sub-Center, which will provide counseling to small businesses in the area of business planning, assistance in the search for financial resources and referrals to special services designed for small businesses. In addition, the Sub-Center will produce training seminars, workshops and courses designed to help small business owners run their cash flow; a challenge for most emerging businesses. This shall be accomplished in accordance with this Grant Agreement, Exhibit A-Statement of Work, and Exhibit B-Code of Federal Regulations Applicable. All projects awarded under this grant agreement are SBDC projects, as defined in CRS 24-30-202 et seq.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

“Budget” means the budget for the Work described in **Exhibit A**.

B. Evaluation

“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in §6 and **Exhibit A**.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work), **Exhibit B** (Code of Federal Regulations Applicable).

D. Goods

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

E. Grant

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

F. Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

G. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

H. Program

“Program” means the Small Business Development Center grant program that provides the funding for this Grant.

I. Review

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and **Exhibit A**.

J. Services

“Services” means the required services to be performed by Grantee pursuant to this Grant.

K. Sub-grantee

“Sub-grantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations.

L. Work

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A**., including the performance of the Services and delivery of the Goods.

M. Work Product

“Work Product” means the tangible or intangible results of Grantee’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM and EARLY TERMINATION.

A. Intial Term-Work Commencement

The Parties respective performances under this Grant shall commence on the later of either the Effective Date or January 1, 2010. This Grant shall terminate on December 31, 2010 unless sooner terminated or further extended as specified elsewhere herein.

6. STATEMENT OF WORK

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit A** on or before December 31, 2010. The State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Sub-grantees shall be considered Grantee’s or Sub-grantees’ employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. COST REIMBURESMENT PAYMENTS TO GRANTEE

The State shall, in accordance with the provisons of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is \$_____, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit A**.

B. Payment

i. Advance, Iterim and Final Payments

Any advance payment allowed under this Grant or in **Exhibit A** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth in approved by the State.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State. Uncontested amounts not paid by the State within 45 days may, if Grantee so requests, bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Grantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day’s interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State’s current fiscal year. Therefore, Grantee’s compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State’s performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State’s liability for such payments shall be limited

to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Grant, the State may immediately terminate this Grant in whole or in part without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other Grants, grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in the Budget. Grantee may adjust budgeted expenditure amounts up to 10% within each line item of said Budget without approval of the State. Adjustments in excess of 10% shall be authorized by the State in an amendment to this Grant. The State's total consideration shall not exceed the maximum amount shown herein.

D. Matching Funds

Grantee shall provide matching funds as provided in **Exhibit A**. Grantee shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this **§8** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§19**, if applicable.

A. Performance, Progress, Personnel, and Funds

Grantee shall submit a report to the State upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibit A**.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of OEDIT.

C. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this **§8** may result in the delay of payment of funds and/or termination as provided under this Grant.

D. SubGrants

Copies of any and all subGrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subGrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subGrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the Record Retention Period) until the last to occur of the following: **(i)** a period of three years after the date this Grant is completed or terminated, or **(ii)** final payment is made hereunder, whichever is later, or **(iii)** for such further period as may be necessary to resolve any pending matters, or **(iv)** if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or inequity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant, Grantee shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions on this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

Grantee shall notify its agent, employees, Sub-grantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Sub-grantees, or assignees pursuant to this §10.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantees Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Sub-grantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each Grant with Sub-grantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Sub-grantee's liabilities under the GIA.

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to sub-Grantees that are not "public entities".

B. Sub-Grantees

Grantee shall require each Grant with Sub-grantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee and Sub-grantee employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent Grantees, products and completed operations, blanket Grantual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Sub-grantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Grantee a certificate or other document satisfactory to Grantee showing compliance with this provision.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

Grantee and the State shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of Grantee and Sub-grantees shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and the State by certified mail.

vii. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Sub-grantees as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Grantee and all Sub-grantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Sub-grantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant or any sub-grant, Grantee and each Sub-grantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or

similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Grants with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or sub-Grants. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State's property.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made.

Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of Grantee's employees, agents, or Sub-grantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such

Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Kelly Manning, CSBDC State Director
OEDIT
1625 Broadway, Suite 2700
Denver, CO 80202
kelly.manning@state.co.us

B. Grantee:

Name and Title of Person
Department Name
Address 1
Address 2
Town, State Zip
Email

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantees's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE GRANT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Grant management system.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Grant Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Grant Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the

end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the OEDIT, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and SubGrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subGranted without the prior, written consent of the State. Any attempt at assignment, transfer, subGranting without such consent shall be void. All assignments, subGrants, or Sub-grantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subGranting arrangements and performance.

B. Attribution-Disclaimer

i. Attribution

In all publications and publicity funded under this Grant a credit line shall be included that reads: "This project paid for in part by a State Historical Fund grant from the Colorado Historical Society".

ii. Disclaimer-State

In addition, the State reserves the right to require that the following sentence be included in any publication and publicity funded through this program: "The contents and opinions contained herein do not necessarily reflect the views or policies of the Colorado Historical Society".

iii. Disclaimer-Owner

Owner reserves the right to place a disclaimer with any attributions made stating, "The contents and opinions contained herein are not intended as federal endorsement or sponsorship of any entity, activity, or organization, contained herein." Owner also reserves the right to place the following language in any publication or publicity where such Property is depicted, which reads, "The contents and opinions contained herein do not necessarily reflect the views or policies of the SBA or the United States Government."

C. Binding Effect

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

D. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

E. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

F. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

G. Indemnification-General

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Sub-grantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a

waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

H. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

I. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by both parties in an amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF GRANTS - TOOLS AND FORMS.

ii. By Operation of Law

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

J. Order of Precedence

The provisions of this Grant shall govern the relationship of the State and Grantee. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** Colorado Special Provisions,
- ii.** The provisions of the main body of this Grant,
- iii.** Exhibit A,
- iv.** Exhibit B.

K. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

N. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Grants except where noted in italics.

P. 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

Q. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

R. 3. GOVERNMENTAL IMMUNITY.

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

S. 4. INDEPENDENT CONTRACTOR

Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

T. 5. COMPLIANCE WITH LAW.

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

U. 6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

V. 7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

W. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

X. 9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

Y. 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

Z. 11. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services] Grantee certifies, warrants, and agrees that it does not knowingly employ or Grant with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant or enter into a Grant with a Sub-grantee that fails to certify to Grantee that the Sub-grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Sub-grantee and the Granting State agency within three days if Grantee has actual knowledge that a Sub-grantee is employing or Granting with an illegal alien for work under this Grant, (c) shall terminate the subGrant if a Sub-grantee does not stop employing or Granting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the Granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the Granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

AA. 12. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Grant.

SPs Effective 1/1/09

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21. SIGNATURE PAGE

Grant Routing Number

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee’s behalf and acknowledge that the State is relying on their representations to that effect.**

<p style="text-align: center;">GRANTEE INSERT-Legal Name of Grantee By: INSERT-Name of Authorized Individual Title: INSERT-Official Title of Authorized Individual</p> <hr/> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO Bill Ritter, Jr. GOVERNOR Office of Economic Development & International Trade Don Marostica, Executive Director</p> <hr/> <p style="text-align: center;">By: Kelly Manning, SBDC State Director Signatory avers to the State Controller or delegate that Grantee has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p> <p>Date: _____</p>
<p style="text-align: center;">2nd Grantee Signature if Needed By: INSERT-Name of Authorized Individual Title: INSERT-Official Title of Authorized Individual</p> <hr/> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

<p>STATE CONTROLLER David J. McDermott, CPA</p> <p>By: _____</p> <p>John Rubano, Controller, Office of Economic Development & International Trade</p> <p>Date: _____</p>

22. EXHIBIT A – STATEMENT OF WORK

1. GENERAL DESCRIPTION

In accordance with the terms and conditions of Grantee’s proposal the Grantee shall perform the task known as Grantee’s *Small Business Development Center Improvement Act Grant Program*, which is hereby incorporated by reference and as follows:

The goal of this grant is the operation a Small Business Development Center Sub-Center (as defined below in §2), which will provide counseling to small businesses in the area of business planning, assistance in the search for financial resources and referrals to special services designed for small businesses. In addition, the Sub-Center will produce training seminars, workshops and courses designed to help small business owners run their business more effectively and efficiently. Attendees should learn to manage their employees and their cash flow; a challenge for most emerging businesses.

2. DEFINITIONS

The following terms as used herein shall be construed, interpreted, and/or referenced as follows unless the context otherwise expressly requires a different construction and interpretation:

- a. **SBA** means the U.S. Small Business Administration
- b. **SBDC** means the Colorado Small Business Development Center
- c. **Lead Center** means the managing department of the Colorado SBDC Network housed in the Colorado Office of Economic Development and International Trade
- d. **Sub-Center** or **Host Institution** means “Grantee Name”

3. GRANTEE’S OBLIGATIONS

3.1 DELIVERABLES

Grant funds will be used to support the operation of the SBDC in accordance with Exhibit A as stated herein.

3.1.1. Project Performance Plan

The focus on start up center operations, network, and build client base.

- 3.1.1.1. Counseling:** Long-Term clients of 5 hours or more Contact and Prep time. To be supported by SBDC Quarterly Counseling Report as reported in EDMIS2. Extended Engagement Clients are Multi-year Long-Term Clients with 5 hours or more, contact time only.

	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
Long-Term Clients					
Extended Engagement					

3.1.1.2. Business Start Ups:

	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
# of Business Starts					

3.1.1.3. Capital Infusion: (To be shown in dollars)

	1 st Quarter	2 ⁿ Quarter	3 rd Quarter	4 th Quarter	Total
Total Capital Infusion					

3.1.1.4. Jobs Created:

	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
# of Jobs Created					

3.1.1.5. Jobs Retained:

	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
# of Jobs Retained					

4. PERSONNEL

4.1. Responsible Administrator.

Grantee's performance hereunder shall be under the direct supervision of _____, an employee or agent of Grantee, who is hereby designated as the responsible administrator of this project.

4.2. Other Key Personnel.

4.2.1. The Sub-Center represents that it has, or will secure at its own expense, unless otherwise stated in this Agreement, all personnel, as employees of the Sub-Center, necessary to perform the work and services required to be performed by the Sub-Center under this Contract with the Lead Center's approval of individual hired as Director.

4.2.2. Such personnel may not be employees of or have any contractual relationship with the Lead Center and no such personnel are eligible for any employee benefits, unemployment compensation or any other benefits accorded to Lead Center employees.

4.2.3. Sub-Center shall pay when due all required employment taxes and income tax withholding. All of the services required hereunder will be performed by the Sub-Center or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services, as stated in the Grant Agreement and Exhibit B.

4.3. Replacement

Grantee shall immediately notify the State if any Key Personnel cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its Key Personnel, it shall notify the State and seek its approval. Such approval is at the State's sole discretion, as the State issued this Grant in part reliance on Grantee's representations regarding Key Personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change would take effect. Anytime Key Personnel cease to serve, the State, in its sole discretion, may direct Grantee to suspend work on the Work until such time as their replacements are approved. All notices sent under this subsection shall be sent in accordance with the Notices and Representatives provisions of this Grant.

4.4. Level of Expertise

The SBDC is a focal point for linking together resources of the federal, state and local governments with the resources of the educational system and the private sector. The SBDC program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDCs focus on providing in-depth quality assistance to small businesses in all areas that promote growth, expansion, innovation, increased productivity and management improvement.

4.4.1. General

- Degree or equivalent successful experience in professional consultation in business development or small business ownership experience
- Strong communication skills, written/oral
- Interpersonal and organizational skills

4.4.2. Duties and Responsibilities of the local Director are:

- Dedicate 100% of work week to SBDC as the Director
- Determine the needs of the local small business community; meet those needs with consulting, business training programs and other services. Also, measure the impact of those services to ensure that the needs are satisfactorily met
- Work with SBA and other local service providers to strengthen working relationships to better serve the local small business community
- Coordinate local small business training and consulting activities to best utilize resources.
- Participate fully in the collection of data and other information to prepare business plans and financial forecasting for clients
- Supervise staff and consultant volunteers
- Continually communicate with State Director and submission, maintenance and management of annual operational budget
- Collect, develop and provide information requested by the State Director for use in quarterly and annual SBDC reports
- Assist the State Director in the development of statewide private and public sector initiatives to increase and improve services to the small business community
- Assist the Lead Center in the preparation of annual SBDC funding proposals
- Work with local media to promote favorable publicity and recognition for the SBDC
- To ensure that all counselors and volunteers complete the Certification Requirement (first three modules) prior to counseling clients. The other five modules need to be complete by the end of their first year with the SBDC
- If managing other federal/non-federal programs, provide an activities timesheet on approved and provided form from Lead Center
- Disclose any and all private business relationships that may conflict with SBDC, host institution, or community services
- The director must sign the conflict of interest and confidentiality releases acknowledging that 100% of their time will be spent devoted to SBDC activities and that no business consulting is permitted in which any financial gain is accrued by the director or any party that has a business or personal relationship with the director

4.4.3. Activities:

- Problem solving
- Involvement with the development and interpretation of policy and procedures
- Gather data/information, analyze and make a disposition

- Promote SBDC programs and services by informing as many people as possible such as business leaders, educators, public officials and local entrepreneurs
- Recruit, develop and support members to serve on a local SBDC Advisory Board
- Liaison between the Office of Economic Development and local community for the delivery of available small business resources
- Outreach seeking new opportunities for service delivery of SBDC products and services
- Employ pragmatic experience and approaches to problem solving

4.5. The above is considered to be a minimum level of qualifications. Amended May 4, 2006, by “Addendum to SBDC Director Salary Review and Selection Criteria Policy”

4.5.1. Addendum to SBDC Director Salary Review and Selection Criteria Policy

4.5.1.1. In accordance with the U.S. SBA review of the Colorado SBDC, it was determined that the current SBDC Sub-Center Directors’ salaries are widely inconsistent. Based upon this recommendation, the SBDC Lead Center has undertaken a salary review. This information reported by each Sub-Center host institution indicates a salary disparity. The SBDC Lead Center understands the advantage of an independent salary schedule for each host institution; however, the schedules have also contributed to a broad range of existing salaries (\$40,000 to 60,000) for Directors. Recognizing that the Directors also have a number of other factors contributing to the range of salaries, like diverse local and regional economies, the SBDC Lead Center is recommending a minimum base salary of \$40,000 for new hires. This recommendation is based in accordance with the Association of Small Business Development Centers (ASBDC) Certification Standards in that, “...The salary of an SBDC Sub-Center Director should be comparable to the annualized salaries established for similar positions in the area served by that particular Sub-Center with comparable responsibility. In educational institutions, a suggested level to consider is that of the annualized salary of an Assistant Professor, taking also into consideration the longevity of the Director in the program, and the professional background of the person who would occupy the position.”

4.5.1.2. The intent of this question raised by the SBA regarding salary is to assure that the SBDC Network is competing for the highest quality staff performance evaluation of SBDC Sub-Center Directors:

4.5.1.2.1. Demonstrated experience in business operation, manufacturing and finance;

4.5.1.2.2. Consulting skills appropriate to support small businesses in the development of:

- Marketing and Distribution Plans
- Business Planning and Strategy Development
- Financial Analysis
- Technology Resource Development
- Communication Skills and Leadership Abilities to Support Small Businesses

4.5.1.2.3. Appreciable knowledge of where to locate and how to develop resources in the areas that include:

- Manufacturing Technology Assistance
- Government Contracting and Procurement
- International Market Development
- Regulatory Compliance Issues

- 4.5.1.3. Criteria that include this combination of experience and skills will assist in assuring the full role of the SBDC Sub-Center Director. The role of the Sub-Center Director includes representation of the state, the local business community and the host institution; this role requires individuals with the highest possible competence. Due to the representation of various local entities the director is required to establish their primary residency in the community that the local SBDC is headquartered therein within a six month period of accepting the Director position.
- 4.5.1.4. Given the fact that the SBDC State Director is currently involved in the selection process of new directors and must concur with the host institution's preferred candidate selection—including the establishment of responsibilities, requirements for employment, and salary—the SBDC State Advisory Board will periodically review all job descriptions and proposed entry level salaries of newly hired Sub-Center directors in terms of the local market and the expectations of the SBA and the SBDC Advisory Board. In addition, the SBDC State Director will participate with the host institution when evaluating SBDC Sub-Center Directors' performance and salary reviews. This process will become a contractual provision of the current OBD/Host Institution "Interagency Agreement," which governs the SBDC network, effective in January of the 1997 program year.

5. ACCEPTANCE CRITERIA

5.1. Annual and Final Report(s)

The Sub-Center will fulfill the performance and financial reporting requirements as outlined in this Provision 5, Performance and Financial Reporting Requirements. If reporting requirements are not satisfied by the deadline established in herein, penalties shall incur as follows:

- 5.1.1. 10% of the current quarterly reimbursement amount or 2.5% of the total federal grant award, whichever is higher, may be assessed against the Sub-Center for submissions 31 to 60 days after the close of the reporting period;
- 5.1.2. 20% for submissions 61 to 90 days after the close of the reporting period;
- 5.1.3. 30% for submissions more than 90 days late.
- 5.1.4. In the event reporting requirements are not satisfied 90 days after the close of the program year, all outstanding reimbursements may be forfeited.

5.2. Performance and Financial Reporting Requirements Due Date(s)

5.2.1. Weekly: All center Counseling records and Training records must be entered into the electronic database (CenterIC) no later than seven days after the date of occurrence.

5.2.2. Monthly:

- 5.2.2.1. Due by the fifth of the month following the quarterly reporting period, the Sub-Center will certify via email that all "641", "641a", "888", and impact reports information into the MIS system as per State approved management information system procedures is correct.
- 5.2.2.2. The Center Director will provide a monthly update to the State via electronic submission of the status of their goals based on benchmarks provided by the State and recommendations of constituent needs assessment.
- 5.2.2.3. Due on the fifteenth of the month following the end of each and every month, the Sub-Center will submit client satisfaction tally sheets for each training event held in the previous month.
- 5.2.2.4. Due on the fifteenth of the month following the end of each and every month, the Sub-Center will submit a client satisfaction tally sheet for the total counseling sessions held in the month in question.

- 5.2.3. Quarterly: The Sub-Center will submit a quarterly Grant Itemization Report, Match Itemization Report and Program Income Account Report, with evidence of expenditures, according to the following schedule:

Quarter	Months	Deadline
Q1	January – March	April 15, 2010
Q2	April – May	June 15, 2010
Q3	June – September	October 15, 2010
Q4	October – December	January 15, 2011

- 5.2.4. Due by the fifteenth of the month following the end of the quarter, the Sub-Center will input narrative (100, 200, etc. reportable event topics) information into the MIS system electronically. The quarterly report will summarize client counseling sessions, SBA Form 888s and a brief description of the Sub-Center activities on the SBDC quarterly narrative template. The Q1 and Q3 report quarterly activities, and the Q2 and Q4 reports will report cumulative activity. Hard copies of the following will be provided to the Lead Center:

- 5.2.4.1. Each training activity must be documented by completing a sign-in sheet and a SBA Form 888 (Management Training Report). Any program announcements must be attached to Form 888. One copy of the Form 888, a copy of the sign-in sheet, and any advertisements are to be sent to the Lead Center
- 5.2.4.2. Any appropriate articles or press releases.

- 5.2.5. Semi Annually / Annually:

- 5.2.5.1. Provide a six month summary of activities based on the quarterly MIS narrative report of activities, other than standard counseling and training, as per designated category guidelines data entry (template provided).
- 5.2.5.2. Provide the work plan updates semi annually / annually summarized activities conducted that assist in meeting the network’s three year strategic directives (template provided).

- 5.2.6. Periodically: Training activity participants must be provided with the Participant Evaluation Questionnaire. A minimum of 50% of participants must complete the evaluation for each training activity. The Sub-Center will keep the completed originals on file with Form 888. No copies are to be forwarded to the Lead Center. Evaluations will be reviewed during annual program reviews.

6. PAYMENT

As indicated in 9 of the Agreement, advance payments of Grant Funds shall be permitted pursuant to a Fiscal Rule waiver granted by the Office of the State Controller. Payments shall be made as soon as practicable after proper execution of the Agreement.

7. ADMINISTRATIVE REQUIREMENTS

7.1. Accounting

- 7.1.1. At all times from the Effective Date of this Grant until completion of the Work, the Grantee shall maintain properly segregated books of State Grant Funds, matching funds, and other funds associated with the Work.
- 7.1.2. All receipts and expenditures associated with said Work shall be documented in a detailed and specific manner, and shall accord with the Work Budget set forth herein.
- 7.1.3. The Sub-Center shall assume responsibility for seeing that all SBDC funding is expended, accounted for and reported to the Lead Center, consistent with underlying SBA agreements, program objectives and with allowable costs addressed by 60 FR 26484, as amended by 62 FR 45934.

- 7.1.4. Adjustments of budget expenditure amounts in excess of ten percent (10%) must be authorized by the Lead Center in an amendment to this Contract properly executed and approved pursuant to the Lead Center Fiscal Rules.
- 7.1.5. In no event shall the Lead Center's total consideration exceed the amount indicated in "Budget" above. Any in-direct cost allocations must be negotiated and approved by the Lead Center upon submission of subsequent year's budget.

7.2. Monitoring

The State shall monitor this Work on an as-needed basis. The State may choose to audit the business activities performed under this Grant. Grantee shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed Grant. Such books and records shall contain documentation of the participant's pertinent activity under this Grant in a form consistent with good accounting practice.

- 7.2.1. Discretionary Audit: The State, through the staff of the Lead Center, the State Auditor, or any of their duly authorized representatives, including an independent Certified Public Accountant of the State's choosing, or the federal government or any of its properly delegated or authorized representatives shall have the right to inspect, examine, and audit the Sub-Center's (and any contractor of the Sub-Center's) records, books, accounts and other relevant documents. Such a discretionary audit may be requested at any time and for any reason from the effective date of this agreement until three (3) years after the date final payment for the project is received by the Sub-Center. The cost of a discretionary audit will be borne by the State through the Office of Economic Development.
- 7.2.2. Mandatory Audit: Whether or not the State calls for a discretionary audit as provided above, the Sub-Center shall provide the Lead Center copies of annual audit reports, conducted each year by the state auditor's office, as required by the Single Audit Act of 1984, Pub. L. 98-502. In addition, the Sub-Center shall supply the Lead Center with copies of all correspondence from the state auditor related to any findings relevant to the SBDC project. If the state audit reveals evidence of non-compliance with applicable requirements, or other issues pertaining to the administration of federal funds or Sub-Center funds, the Lead Center reserves the right to institute compliance, or other appropriate measures, to address audit findings.

7.3. Specific Terms and Conditions

7.3.1. Branding

- 7.3.1.1. The purpose of this subcontract is to implement the operation of an SBDC center at the Host Institution(s). The SBDC Network, of which this center is a part, operates under guidelines prescribed by the Small Business Administration (SBA) through its program announcement, as well as applicable statutes, regulations, and OMB Circulars. The undertaking represented by this subcontract, and similar subcontracts with other Host Institutions, is a joint effort to deliver services to the parties' customers and students. The SBA guidelines describe a system that is to be unified and consistent across the State of Colorado. Goals of the Host Institution that are consistent with the SBA guidelines are described in the annual funding application submitted by the SBDC network to the SBA; these Host Institution goals are a welcome component of the program.
- 7.3.1.2. To promote the goal of program consistency, stationery, business cards, website, and all marketing material used by center personnel will carry the logo and will be in the format of those used by the Program Lead Center.

The Host Institution's logo may be placed at the bottom of the stationery as part of the address.

- 7.3.1.3.** All printed materials developed or published for workshops, including program announcements, by the SBDC, whether copyrighted or not, must include the following disclaimer: "██████████" is partially funded by the U.S. Small Business Administration. The support given by the U.S. Small Business Administration through such funding does not constitute an express or implied endorsement of any of the cosponsor(s)' or participants' opinions, products or services."
 - 7.3.1.4.** The SBDC office will be clearly identified by strategically placed signs directing clients to the SBDC office. The Sub-Center and satellite center will install a Colorado Small Business Development Center office sign which has been approved by the Lead Center at a location that can easily be seen by members of the general public in or near the counseling site established by the Sub-Center.
- 7.3.2.** Expenses incurred by the Sub-Center in association with this project prior to January 1, 2010 and after December 31, 2010 are not eligible FY2010 SBDC expenditures under this grant and shall not be reimbursed by the Lead Center.
 - 7.3.3.** The Sub-Center will assist in developing strategic plans for addressing appropriate SBA, state, and local priorities within the framework of the SBDC program by submitting an Annual Workplan on approved template that mirrors the Network Strategic Plan.
 - 7.3.4.** The Sub-Center will provide advice to the Lead Center on policy issues and SBDC program operations
 - 7.3.5.** The Sub-Center will assist the Lead Center in determining the needs of local small businesses and assist in economic impact assessments.
 - 7.3.6.** The Sub-Center will maintain and strengthen the relationships between SBDC and SCORE, local chambers of commerce, appropriate State of Colorado business development agencies (e.g. Department of Agriculture Marketing Division, International Trade Office and Minority Business Office) and other local business service organizations.
 - 7.3.7.** The Sub-Center will provide assistance to the Lead Center for the continuous updating of the SBDC Library Resources directory.
 - 7.3.8.** The Sub-Center will cross-refer clients between Sub-Centers to match their specific needs with available specialized resources (e.g. Small Business & International Trade Center and Technology Assistance and SBIR Programs.)
 - 7.3.9.** The Sub-Center will allow the State Director or his/her designee to participate in the process of identifying, recruiting, interviewing, hiring and reviewing the continued performance of Sub-Center directors, as per Exhibit A. The SBDC State Director must concur with the selection and termination of a Sub-Center director. This participation includes the review of all resumes when requested during the hiring process, participation as a member of the hiring committee and must concur with the host institution's preferred candidate selection as outlined in Exhibit A.
 - 7.3.10.** The Sub-Center will notify the Lead Center of any and all unplanned out-of-state and out-of-country travel at least 30 days in advance with a written justification of the trip. It is the Lead Centers authority to approve or decline any unbudgeted out-of-state travel. Written approval for out-of-country travel must be obtained from both the Lead Center and the SBA.
 - 7.3.11.** The Sub-Center will provide an office conveniently located and easily accessible to the small business community. The office will have a room available for confidential counseling.
 - 7.3.12.** The Sub-Center will maintain a publicly listed telephone in the name of the "Colorado Small Business Development Center" (SBDC). The phone will be answered "Colorado Small Business Development Center."
 - 7.3.13.** The Sub-Center will be staffed and operational at least forty hours a week during normal business hours. Shutdowns exceeding one working day shall require the use of a telephone answering system for explanatory purposes.

- 7.3.14.** The Sub-Center will provide adequate training and counseling services throughout the service area of the Sub-Center. The service area is defined as: Host location and appropriate locations of metropolitan areas
- 7.3.15.** The Sub-Center will ensure that only those counseling cases that have one or more hours of counseling provided at the initial session will be reported. Continuous client files shall not remain open more than 120 days without a documented follow-up review or counseling session. The Sub-Center will maintain individual paper and computer files on each counseling case, including all documentation necessary to provide a clear audit trail.
- 7.3.16.** The Sub-Center will ensure that the amount of time permitted for staff vacations and holidays will conform to the host organization's policies. Vacations will be arranged to avoid interrupting SBDC services and activities and Lead Center shall be notified of dates.
- 7.3.17.** The Sub-Center will provide an adequate number of client parking spaces near the SBDC office. Parking shall be provided at no cost or at a minimal charge to the client.
- 7.3.18.** The Sub-Center director will attend all statewide SBDC meetings and professional development training sessions (mandatory and budget should reflect travel for the events). The Host Institution designated representative must attend the Annual Host Meeting.
- 7.3.19.** The host institution will comply with the SBDC Sub-Center Director Minimum Qualifications and Responsibilities Statement as outlined in Exhibit A.
- 7.3.20.** The host institution will ensure that no more than 60 days elapse without a permanent SBDC Sub-Center director on staff. Furthermore, should there be a gap between permanent Sub-Center directors, the host institution will ensure that the SBDC is appropriately staffed with qualified temporary staff and that services to clients are in no way interrupted or suspended at the Sub-Center's expense.
- 7.3.21.** The host institution must provide any and all actual cash match contributions to the Sub-Center and any deficiency in this allocation must be provided by partnerships and/or fundraising activities coordinated and implemented on behalf of the Sub-Center by the host institution.
- 7.3.22.** All advertising or other promotional materials developed or distributed in connection with conferences or other meetings or gatherings must contain the following statement: "Special arrangements for the handicapped will be made, if requested in advance."
- 7.3.23.** The Sub-Center Director, and all Sub-Center employees, volunteers, and paid consultants must sign and abide by the applicable conflict of interest policy and Confidentiality policy established by the SBDC Lead Center. Signed copies of these forms must be received prior to new employees conducting counseling/training sessions.
- 7.3.24.** The Sub-Center Director, and all Sub-Center employees, volunteers, and paid consultants must complete the first three training modules, and any applicable standardized curriculum and modules. A submission form to the Lead Center must be sent prior to new employees conducting counseling/training sessions.
- 7.3.25.** The Sub-Center director will actively participate in the monthly conference call and the electronic mail (e-mail) network.
- 7.3.26.** The Sub-Center will execute the required SBA Certification Forms and Assurances provided by the Lead Center. These forms include, but are not limited to, the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions" (SBA Temporary Form 1624).
- 7.3.27.** The Sub-Center Director must submit a minimum of one nomination to the SBA Colorado District Office for the Annual SBA Small Business Awards. The nominations may be in any of the categories established by the SBA.
- 7.3.28.** All Leading Edge instructors must complete a National Certification process before teaching NxLevel Curriculum. Certification must be renewed bi-annually.
- 7.3.29.** All expenses exceeding a total of \$1000 must be approved by the CSBDC Lead Center.
- 7.3.30.** The Sub-Center Director is required to maintain and submit a current inventory list annually or upon request.

8. WORK BUDGET

8.1. Matching Funds

The Sub-Center will provide at least 100% in match funds, with 50% cash, in support for this Project. The cash match amount described herein as \$_____ must be spent by the host organization as of December 31, 2010 regardless of remaining grant balances. Other Federal Grants cannot be used as cash match towards this match agreement, nor can these match funds be used as cash match toward another grant agreement.

8.2. Grant Funds

		DESCRIPTION
U.S. SBA Fund		
Match Contribution		
Direct In-Kind		
	TOTAL:	

9. TERMINATION OR EARLY TERMINATION OF AGREEMENT

In the event of early termination of this agreement, a minimum of ninety (90) days notice must be provided by the host institution to the State Director in writing. All finished or unfinished documents and other materials will become, at the option of the State Director, SBDC Lead Center’s property. Any equipment, supplies, and furniture purchased by federal, cash match, or program income dollars becomes the property of the SBDC Network and must be delivered to the State Director within thirty (30) days after the closure of the center. The cash match contribution in the budget section of the agreement signed by the host institution is contractually obligated to be dispensed in full regardless of the any remaining grant balances. In the case that the cash match contractually agreed upon is not fully dispensed, the host institution must return federal grant dollars in the amount of the remaining cash match balance not spent in order to meet the cash match contribution agreed upon. The Program Income account shall be balanced and a check written to the State of the remaining of funds in the Program Income account. Contractor shall not be relieved of any obligations to repay funds advanced as a loan, notwithstanding any termination of the Agreement for convenience. In the case of termination or non-renewal of the SBDC agreement, the above criteria remains the close-out procedure will be completed within ninety (90) days after December 31, 2010.

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23. EXHIBIT B – CODE OF FEDERAL REGULATIONS APPLICABLE

1. The "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18.
2. Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 C.F.R. Chapter 60). [All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees]
3. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3). [All contracts and sub grants for construction or repair in excess of \$2,000]
4. The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 C.F.R. Part 5). This act requires that all laborers and mechanics employed by Contractors or sub-contractors that work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor. [Construction contracts in excess of \$2,000 awarded by grantees and sub grantees when required by Federal grant program legislation]
5. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 C.F.R. Part 5). [Construction contracts awarded by grantees and sub grantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers]
6. 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 C.F.R. Part 15). [contracts, subcontracts, and sub grants of amounts in excess of \$100,000]
7. Mandatory 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).
8. Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, A-133, whichever is applicable.
9. The Hatch Act (5 U.S.C. 1501-1508) and Public Law 95-454, Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.
10. U.S.C. 6101 *et seq.*, 42 U.S.C. 2000d, 29 U.S.C. 794, and implementing regulation, 45 C.F.R. Part 80 *et seq.* These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds;
11. The Americans with Disabilities Act (Public Law 101-336; 42 U.S.C. 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213, 47 U.S.C. 225 and 47 U.S.C. 611.
12. The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). [If the Contractor is acquiring real property and displacing households or businesses in the performance of this contract]

13. The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 U.S.C. 701 *et seq.*).
14. The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 *et seq.* and its implementing regulation, 45 C.F.R. Part 91;
15. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.
16. And include the following:
 - a. 13 C.F.R. 130
 - b. the applicable Program Announcement
 - c. the current Notice of Award
 - d. SBA Policy Guidelines, including SBA Memoranda and SBA Policy Notices, in effect as of the beginning date of the budget period or that become effective during the term of this Agreement
 - e. SBA Administrative Guidelines, including SBA Memoranda and SBA Standard Operating Procedures, in effect as of the beginning date of the budget period or that become effective during the term of this Agreement
 - f. Colorado SBDC Policy & Procedure Manual, which are all incorporated herein and made part of this Agreement either directly or by reference

