



Commonwealth of the Northern Mariana Islands

Department of Labor

Office of the Secretary

1356 Mednilla Avenue | Capitol Hill

P.O. Box 10007 | Saipan, MP 96950

Phone: (670) 664-3196

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MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** (hereinafter, "Agreement") is between the DEPARTMENT OF LABOR, a department of the Commonwealth of the Northern Mariana Islands (hereinafter, "CNMI DOL") and _____(hereinafter, "Entity") (collectively, "the parties").

WITNESSETH THAT

WHEREAS, the Consolidated Natural Resources Act of 2008, U.S. Public Law 110-229 (hereinafter, "CNRA"), amended the Covenant to establish federal control over immigration in the Commonwealth of the Northern Mariana Islands (hereinafter, "CNMI");

WHEREAS, the Northern Mariana Islands U.S. Workforce Act of 2018, U.S. Public Law 115-218 (hereinafter, "NMI Workforce Act") was passed, in part, to incentivize the hiring of the United States workers in the CNMI;

WHEREAS, certain fees collected pursuant to CNRA and NMI Workforce Act are transferred to the CNMI government and held in the Commonwealth Worker Fund **for the sole and exclusive purpose of funding vocational education, apprenticeships, or other training programs for United States workers;**

WHEREAS, the NMI Workforce Act requires the CNMI Governor to submit a plan for the expenditure of Commonwealth Worker Fund to the US Secretary of Labor not later than 120 days before the first day of the fiscal year 2020 and annually thereafter;

WHEREAS, not later than one hundred twenty (120) days after receiving the expenditure plan, the U.S. Secretary of Labor must issue a determination on the plan and submit a report to U.S. Congress that describes the effectiveness of the Commonwealth government at meeting the goals set forth in said plan;

WHEREAS, disbursements of funds will be made in accordance to an approved expenditure plan;

WHEREAS, as stated in GOV20-18, the CNMI Governor named CNMI DOL as the authorized designee for the expenditure of the Commonwealth Worker Fund, in fulfillment of the above-stated plan.

WHEREAS, CNMI DOL finds that, to promote collaboration, transparency, and accountability, at all levels, established procedures and additional reporting from educational entities is necessary;

WHEREAS, the purpose of this Agreement is to promote an effective, efficient, transparent, and accountable administration with respect to the Commonwealth Worker Fund.

NOW, THEREFORE, in view of the above recitals, and in consideration of the mutual covenants, conditions, and the benefits to be derived herein, CNMI DOL and Entity mutually agree as follows:

ARTICLE I. DEFINITIONS

For the purposes of this Agreement, unless another meaning is implicitly indicated by the context, the following terms shall have the meanings set forth below:

- A. "Administrative cost" shall mean expenditures incurred by Entity which are not related to the direct provision of funding vocational education, apprenticeships, or other training programs. These costs can be both personnel and non-personnel and both direct and indirect. Administrative costs are the costs associated with performing general administrative functions, including but not limited to, accounting, budgeting, financial and cash management functions, procurement and purchasing functions, personnel management functions, payroll functions, audit functions, legal services functions, fiscal agent responsibilities, and oversight and monitoring responsibilities. Administrative costs also include the costs of goods and services required for administrative functions, including but not limited to, office supplies, rental space, postage and outsourcing.
- B. "Appropriation" shall mean an act of the CNMI Legislature that allows CNMI departments, agencies, or other government entities to incur obligations and make payments from the CNMI Treasury for specified purposes.
- C. "Day" shall mean business days.
- D. "Fiscal year" shall mean a twelve month accounting period beginning October 1 and ending September 30 of the succeeding year. A fiscal year is designated by the year in which it ends.

- E. "Grant period" shall mean one fiscal year.
- F. "Reprogram" or "reprogramming" shall mean the reallocation of appropriated funds from one agency or executive department, program, function, or object class to another.
- G. "Program Year" shall mean the twelve month period beginning February 1 and ending January 31 of the succeeding year. A Program year is designated by the fiscal year which it begins.

ARTICLE II. TERMS

Section 2.1. Funding

The amount of funding subject to this Agreement, is contingent on availability under the Commonwealth Worker Fund, approval pursuant to the NMI Workforce Act, compliance with applicable law and this Agreement. In the event funding is unavailable, disapproved, or otherwise inaccessible, Entity understands that nothing in this Agreement is meant to create a right to funding.

Section 2.2 Use of Funding

The use of funding received from the Commonwealth Worker Fund shall be for the sole exclusive purpose of funding vocational education, apprenticeships or other training programs for eligible United States citizens or permanent residents at institutions within the CNMI. The vocational education, apprenticeship or training must be conducted in the CNMI.

The vocational education, apprenticeship or training must address workforce needs listed in any of the following data sources:

- a. The top-10 ONET Occupations compiled from the CNMI DOL JVA postings in the Division of Employment Services annual report (found at marianaslabor.net under the Division of Employment Services)
- b. Office of Foreign Labor certification CW transitional worker program in the CNMI Selected Statistics Historical Program Fact Sheets for the last three years

Section 2.3. Unused Funds

A closeout report shall be submitted within forty-five (45) days at the end of the grant period. Any portion of the grant funds disbursed but not expended by the end of grant

period shall be returned to the CW Fund account. Such return of unused funds shall take place within forty-five (45) calendar days following the submission of the closeout report. Unused funds collected shall be reprogrammed for use in the following Fiscal Year.

Section 2.4. Restrictions

The funding subject to this Agreement shall not be used to pay or reimburse the following costs or programs:

- A. More than 60% of administrative costs;
- B. Advanced degree programs (Masters Degrees and above);
- C. Medical or scientific research;
- D. Arts, Cultural, and Museum programs;
- E. Board member salaries, bonuses, or stipends;
- F. Travel or lodging costs outside of the CNMI;
- G. Costs related to recruitment efforts for staffing outside of the CNMI ; and
- H. Judgments or legal costs incurred by Entity or program.

Funding may not be used in any manner contrary to applicable law.

Section 2.5. Required Reporting by Entity

Prior to the obligation and disbursement of funds, Entity shall submit the following documents to the Secretary.

A. Annual Plan and Budget

In order to be considered for CW funding, Entity shall submit an Annual Plan and Budget, and any attachments, using the designated application form. Entity shall submit the completed and signed Annual Plan and Budget to the CNMI Secretary of Labor in person, by fax, or by electronic mail. All plans are due no later than April 15 of that year.

B. Quarterly Expenditure Report

On or before the fifteenth (15th) day of the beginning of each Program Year quarter, Entity shall submit a Quarterly Expenditure Report of the previous quarter. Specifically:

1. Entity shall submit the first quarter expenditure report on or before May 15th;
2. Entity shall submit the second quarter expenditure report on or before August 15th;
3. Entity shall submit the third quarter expenditure report on or before November 15th; and
4. Entity shall submit the fourth quarter expenditure report on or before February 15th.

The Quarterly Expenditure Report shall be a detailed report of how the funds were spent in the previous quarter. The report shall itemize the applicable salaries or personnel costs, equipment, tools, and other operational or supply expenditures. Any unauthorized deviations from Annual Plan and Budget will not be funded.

The Quarterly Expenditure Report shall be subject to review and approval by the Secretary. Any errors in accounting or impermissible expenditures must be corrected by Entity. Corrections shall be submitted in an Amended Quarterly Expenditure Report as soon as practicable. Any anticipated funding will not be disbursed or released until the necessary corrections are made.

C. Quarterly Performance report

On or before the fifteenth (15th) day of the beginning of each Program Year quarter, Entity shall submit a Quarterly Performance Report of the previous quarter. Specifically:

1. Entity shall submit the first quarter performance report on or before May 15th;
2. Entity shall submit the second quarter performance report on or before August 15th;
3. Entity shall submit the third quarter performance report on or before November 15th; and
4. Entity shall submit the fourth quarter performance report on or before February 15th.

The Quarterly Performance Report Template shall be provided. This includes but is not limited to:

1. A summary of data on the participants served by the grantee programs disaggregated by each program
2. A detailed report of any direct employment of U.S. or eligible U.S. workers that participated in the Entity's programs

D. Closeout Report

Entity shall submit a Closeout Report to the CNMI Secretary of Labor no later than forty-five (45) days after the Program Year ends in which funding was awarded. The Closeout Report shall describe the Entity's effectiveness and justifications for future funding, if any.

The Closeout Report shall be comprised of:

1. The Entity's data and representations regarding the progress, outcomes, and achievements of the Program Year;
2. An unduplicated headcount of program participants;
3. Description of progress toward participants' certifications;
4. Documentation of known placement in the CNMI workforce; and

5. The Entity's explanation on the effectiveness of expenditures in the placement of US workers into jobs held by non-US workers as a result of a participant's completion of their programs.

E. Other

Upon the Secretary's request, Entity shall submit any additional information or documents related to the use of applicable funds. Such documents include, but are not limited to Entity's Workforce Listing, list of instructor salaries, list of curriculum and program details, audit reports, or other relevant financial statements.

Section 2.6. Concurrent enrollment in WIOA programs

All Entities receiving CW funds shall co-enroll willing and eligible participants in the WIOA program in an effort to leverage resources and consolidate data collection efforts.

Section 2.7. Records

Entity shall record, maintain, and keep adequate and accurate books and records of all receipts and disbursements in connection with this Agreement. Subject to any other provisions of law, Entity shall maintain records in connection to this funding for a minimum of three (3) years. Upon Secretary's request, Entity shall promptly deliver a copy of any such books and/or records to CNMI DOL.

Section 2.8. Review

Upon receipt of all the necessary reports and/or records, the Secretary shall have fifteen (15) days to review the documents for sufficiency and compliance with the above-stated provisions. A positive review will trigger the disbursement or release of funding, as provided under Section 2.9 of this Agreement. A negative review can be triggered by incomplete information, inconsistencies in accounting, unjustifiable or improper expenditures in violation of Sections 2.2 and 2.4 of this Agreement. A negative review will trigger a request for additional information, a request for necessary corrections, or recommendation to reprogram funds. Entity shall correct and cure any expenditure that fails to comply with this Agreement within thirty (30) days of written notice. The Secretary will make every reasonable effort to bring Entity into compliance prior to a recommendation to reprogram funds.

Section 2.9. Disbursement or Release of Funds

Subject to the terms and conditions of this Agreement, including but not limited to the submission and a positive review of the required documents, Secretary shall promptly

disburse or authorize the release of the above-stated funds to Entity. The Secretary shall not release funds for expenditures that fail to comply with this Agreement.

Secretary shall disburse or authorize the release of the above-stated funds to each Entity on a quarterly basis, based on revenue deposited in CNMI Treasury by USCIS.

Section 3.1. Failure to Submit

Entity's failure to submit the required documents and accounting, as specified in Sections 2.5-2.7, may result in: (1) delays in the disbursement or release of any funding, or (2) rescission of the funding award and subsequent reprogramming of funds.

Section 3.2. Reprogramming

The Governor of the CNMI has reprogramming authority of the above-stated funding. Reprogramming is appropriate in circumstances where Entity fails to submit the required reporting or records or upon recommendation by the Secretary.

However, said funding may not be used or reprogrammed for any other purpose than funding vocational education, apprenticeships, or other training programs, as stated in Section 2.2.

Section 3.3. Notice. Any written notices required by this Agreement will be made by personal delivery, email, or certified mail with return receipt to the following:

Entity:

Department of Labor: Leila Staffler, Secretary
 Department of Labor
 Office of the Secretary
 1356 Medinilla Avenue, Capitol Hill
 P.O. Box 10007, Saipan MP 96950
 Saipan, MP 96950
 Email: leila.staffler@dol.gov.mp

ARTICLE III. OTHER PROVISIONS

Section 3.4. Governing Law

This Agreement is governed by the laws of the Commonwealth of the Northern Mariana Islands and the federal laws of the United States of America. The venue for any suit arising out of this Agreement shall be the Superior Court for the Northern Mariana Islands.

Section 3.5. Compliance with Applicable Law

Entity shall be cognizant of, observe, and comply with all the applicable federal and Commonwealth laws, rules, and regulations.

Section 3.6. Authority

Each party represents that it has the necessary authority to execute this Agreement and to bind the party for whom he or she is signing.

Section 3.7. Good Faith Collaboration

The parties shall make a good faith effort to collaborate on issues relating to this funding and this Agreement. Said collaboration shall include a discussion on current CNMI workforce needs, effectiveness on use of funding, and compliance with this Agreement. Entity shall retain all control and decision-making authority over institutional programming and curriculum.

Section 3.8. Right to Audit

Entity shall provide the Public Auditor of the Commonwealth of the Northern Mariana Islands with access to and the right to examine and copy any records, data, or papers relevant to this Agreement until three (3) years have passed since the final payment pursuant to this Agreement.

Section 3.9. Indemnification and Release

Entity releases the Commonwealth of the Northern Mariana Islands and the Secretary from any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by or asserted or imposed against Entity as a result of or in connection with this Agreement and the use of the funding provided under this Agreement.

Section 3.10. Construction; Severability

This Agreement shall not be construed against the party preparing it but shall be construed as if both parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against either party. In the event that any one or more of the provisions of this Agreement shall be determined to be invalid, unenforceable, or illegal, such invalidity, unenforceability, or illegality shall not affect any other provision of this Agreement and the Agreement shall be construed as if such invalid, unenforceable, or illegal provision has never been contained herein.

Section 3.11. Entire Agreement

This Agreement constitutes the entire and complete agreement of the parties and supersedes all other agreements between the parties, whether written or oral. There are no other agreements or promises that have not been stated in this Agreement.

Section 3.12. Amendments or Modifications

No amendment of this Agreement will be effective unless it is in writing and signed by the parties.

Section 3.13. Effective Date

This Agreement shall be effective on the date that the last party signs it.

ARTICLE IV. SIGNATURES

IN WITNESS WHEREOF, the parties have duly executed and agreed to be bound by this Agreement by the signatures of the parties, or their authorized representatives below.

LEILA H.F.C. STAFFLER
Secretary of Labor
CNMI Department of Labor

Date

Date