

STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

Agreement made and entered into this 27th day of June, 2018,

by and between South Dakota Legislative Research Council, a state agency, of 500 E. Capitol Ave., Pierre, SD 57501 (the "State") and
Harry W. Kenworthy,

(Name)

of QPIC, LLC, 21 Apache Lane,

(Company Name)

(Address)

Marlborough, CT, 06447,

(City)

(State)

(Zip Code)

860-295-9134 (the "Consultant").

(Phone Number)

The State hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant will perform those services described in Request For Proposal #1376 and the Consultant's Response To Request For Proposal #1376, attached hereto as Exhibits A and B, respectively, and by this reference incorporated herein, with the exception of the following amendments to Exhibit B.

a.) The number of Kaizen events will be reduced from four events, each lasting five days, to three events, each lasting four or five days, as mutually agreed by the Consultant and the Bureau of Administration.

b.) The total contract amount is reduced by \$15,000, which is also reflected in Section 4.

2. The Consultant's services under this Agreement shall commence on July 9, 2018, and end on January 9, 2019, unless sooner terminated pursuant to the terms hereof.

3. The Consultant will not use State or Bureau of Administration equipment, supplies or facilities, without prior permission. The Consultant will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.

4. This is a time and materials contract – services will be used and paid on an as-needed basis. The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT shall not exceed \$91,000. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26.

5. The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits,

damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

C. Worker's Compensation Insurance:

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

7. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable

law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

9. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

10. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

11. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

14. The Consultant may not use subcontractors, except Chris Lindstrom or Jack Merritt, to perform the services described herein without the express prior written consent of the State and the Bureau of Administration. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations,

ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

15. The State of South Dakota may continue to use the curriculum to train state agency personnel, including future state agency personnel, in the use of the Consultant's training materials, curriculum, and methodology. The State of South Dakota is not permitted to share any materials outside of itself and its agencies, aside from what is required through public information requests. Additionally, Bureau of Administration personnel are not permitted to provide training in Consultant's methodologies, except for State of South Dakota personnel.

16. The Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

17. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Jason Hancock on behalf of the State, and by Harry Kenworthy, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

18. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

19. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

20. For purposes of this paragraph, "State" shall include the South Dakota Legislative Research Council or the Bureau of Administration, and "State Proprietary Information" shall include all information disclosed to the Consultant by the State. The Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities shall not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. The Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities shall not: (i) disclose any State Proprietary Information

to any third person unless otherwise specifically allowed under this agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents or third party Consultants except those who have a need to access such information and who have agreed to obligations of confidentiality at least as strict as those set out in this agreement. The Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. The Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities shall protect the confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. The Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities agree to return all information received from the State to State's custody upon the end of the term of this agreement, unless otherwise agreed in a writing signed by both parties. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to the Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities ; (ii) was known to the Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities without restriction at the time of disclosure from the State; (iii) that was disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by the Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities without the benefit or influence of the State's information; (v) becomes known to the Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities without restriction from a source not connected to the State of South Dakota. State's Proprietary Information can include names, social security numbers, employer numbers, addresses and other data about applicants, employers or other clients to whom the State provides services of any kind. The parties mutually agree that neither of them nor any Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities shall disclose the contents of this agreement except as required by applicable law or as necessary to carry out the terms of the agreement or to enforce that party's rights under this agreement. Consultant acknowledges that the State and its agencies are public entities and thus may be bound by South Dakota open meetings and open records laws. It is therefore not a breach of this agreement for the State to take any action that the State reasonably believes is necessary to comply with South Dakota open records or open meetings laws.

21. From time to time it may be necessary or desirable for either the State or the Consultant to propose changes to the Services provided. Such changes shall be effective only if they are in writing and contain the dated signatures of authorized representatives of both parties. Unless otherwise indicated, a change or amendment shall be effective on the date it is signed by both parties. Automatic upgrades to any software used by the Consultant to provide any services that simply improve the speed, efficiency, reliability, or availability of existing services and do not alter or add functionality, are not

considered “changes to the Services” and such upgrades will be implemented by the Consultant on a schedule no less favorable than that provided by the Consultant to any other customer receiving comparable levels of services.

22. In the event of a breach of these representations and warranties the State may, at the State’s discretion, provide the Consultant with the opportunity to rectify the breach. The Consultant shall immediately, after notice from the State, begin work on curing such breaches. If the notice is telephonic the State will provide, at the Consultant’s request, a written notice to reaffirm the telephonic notice. If such problem remains unresolved after three days, at State’s discretion, Consultant will send, at Consultant’s sole expense, at least one qualified and knowledgeable representative to the site directed to by the State. This representative will continue to address and work to remedy the deficiency, failure, malfunction, defect, or problem at the site. The rights and remedies provided in this paragraph are in addition to any other rights or remedies provided in this Agreement or by law.

23. The State, at its option, may require the vetting of any of the Consultant, and Consultant’s Subcontractors, Agents, Assigns and/or Affiliated Entities. The Consultant is required to assist in this process as needed. The State reserves the right to reject any person from the project who the State believes would be detrimental to the project or is considered by the State to be a security risk.

The State reserves the right to require the Consultant to remove from the project any person the State believes is detrimental to the project or is considered by the State to be a security risk. The State will provide the Consultant with notice of its determination, and the reasons removal is deemed necessary. If the State signifies that a potential security violation exists with respect to the request, the Consultant shall immediately remove the individual from the project.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

LEGISLATIVE RESEARCH COUNCIL CONSULTANT

BY: _____
(NAME)

BY: Harry W. Kenworthy
(NAME)

LRC Director Jason Hancock

QPIC, LLC, Principal & Manager
(TITLE)

(DATE)

June 27, 2018
(DATE)

- State Agency Coding (MSA Center) _____.
- State Agency MSA Company for which contract will be paid _____.
- Object/subobject MSA account to which voucher will be coded _____.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract _____.