FORT HAYS STATE UNIVERSITY

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CONTRACT ADDENDUM

Date: August 15, 2012

Contract Number: 12014

Addendum Number: 1

Fort Hays State University Purchasing Office
Telephone: 785-628-4251
Fax: 785-628-4046
E-Mail Address: purchasing@fhsu.edu
Web Address: http://www.fhsu.edu/ purchasing/

Item: Develop Online Animated Courses from list below

Agency: Fort Hays State University
Location(s): Hays, KS

Term of Contract: March 15, 2012 through May 15, 2013 or upon completion of the courses.

Contractors: eTown Solutions, LLC
1219 Rural Street
Emporia, KS 66801
PH: 620-481-1778
Contact Person: Steve Harmon, Owner
Email Address: etwonsolutions@goetown.com
Web Address: www.etownsolutions.com

Conditions:

- Barton Community College terminated the memorandum of understanding agreement with EnergyNET effective April 23, 2012. No courses will be developed.
- The name of EnergyNET has officially been changed to KANSASEnergyWORKS.
- Courses are being added for North Central Kansas Technical College.
- Contact information, payment schedule, and course information is provided below.

Mail invoices to:
Fort Hays State University
EnergyNET/KANSASEnergyWORKS
Attn: Tim Cossaart, Assistant Director
600 Park Street
Hays KS 67601

Fort Hays State University Contacts:
Mike Michaelis, Director
KANSASEnergyWORKS
Phone: 785-628-4620
mwmichaelis@fhsu.edu

Tim Cossaart, Assistant Director
KANSASEnergyWORKS
Phone: 785-628-4611
tccossaart@fhsu.edu

Sabrina William, Online Course Developer
KANSASEnergyWORKS
Phone: 785-628-4612
slwilliam@fhsu.edu

Manhattan Technical College Contacts:
Marilyn Mahan, Vice President of Instructional Services
Phone: 785.587.2800 Ext 4101
marilynmahan@matc.net

Brent Boring, Instructor
Phone: 785.587.2800
brentboring@matc.net

Rex Fair, Instructor
Phone: 785.587.2800
rexfair@matc.net

North Central Technical College Contacts:
Kirby Shamburg, CDL Instructor
Phone: 785-738-9043
kshamburg@ncktc.edu

Mark Jones, Excavating Instructor
Phone: 785-738-9019
mjones@ncktc.edu

Pratt Community College Contact:
Joseph E. Varrientos, Ph.D., Dean of Technical Instruction / Assistant Vice President of Instruction
Phone: 620-450-2175
joev@prattcc.edu

Schedule:

April 15, 2012	Outline of plan and timeline due to EnergyNET
May 15, 2012	Wire frame (template, or shell) due for review
November 15, 2012	Completion of Group I Course List (7 courses – 23 credit hours)
February 15, 2013	Completion of Group II Course List 11 courses – 23 credit hours)
May 15, 2013	Completion of Group III Course List (7 courses – 22 credit hours)
May 15, 2013	Conclusion of all work and delivery of final product by vendor

Course Deliverables: Develop the following 68 credit hours for on-line delivery; including instructional, curriculum, graphic, multimedia, web, animation, and simulation design; and assessment. **Courses may be moved from one group to another. Total credit hours for each group may change. Every effort will be made to keep credit hour totals for each group the same as planned.**

Group I

Course Name	Credit Hours
Manhattan Area Technical College	
• Climbing Skills	4
• Pole Setting, Framing, and Rigging	5
North Central Kansas Technical College	
• Commercial Driver's License	1
• Motor Grader Operation & Maintenance I	3
•	
Pratt Community College	
• Electrical Theory	3
• Conductor Installation and Repair	4
• Underground Distribution	3
Total	23

Group II

Manhattan Area Technical College	
• Trucks and Equipment	3
• Employability Skills	1
North Central Kansas Technical College	
• Crawler Operations & Maintenance II	3
• Motor Grader Operation & Maintenance II	3
• Scraper Operations & Maintenance I	3
• Loader Operations & Maintenance I	1
• Crawler Tractor Operations & Maintenance I	3
• Backhoe/Loader/Excavator Operations & Maintenance I	1
• Occupational and Pre-Operational Safety and Basic Maintenance	1
Pratt Community College	
• Rubber Gloving and Hot Sticking	3
• System Coordination and Troubleshooting	1
Total	23

Group III

Manhattan Area Technical College

• Transformer Theory and Installation	8

North Central Kansas Technical College

• Backhoe/Loader/Excavator Operations & Maintenance II	2
• Scraper Operations & Maintenance II	3
• Related Equipment Instruction	2
• Locator Operations – Level I	1
• Horizontal Directional Drilling - Level I	2

Pratt Community College

• Substations and Voltage Regulation	4
Total	22

Payment Schedule: In return for the delivery of the services identified in the RFP, Fort Hays State University agrees to pay eTown Solutions, LLC, the sum of **$201,355**. The parties agree that the project timeline and compensation shall be as follows:

- 25% ($49,212.50) of the original project cost within 45 days of receipt of a signed contract between FHSU and eTown Solutions. (Payment of $49,212.50 was made within 45 day of signed contract.)
- 25% (**$50,714.17**) of amended project cost at the mutually agreed upon completion of Group I.
- 25% (**$50,714.17**) of amended project cost at the mutually agreed upon completion of Group II.
- Final 25% (**$50,714.16**) of amended project cost upon receipt, test completion, and approval of Group III.

All payments will be made after receipt of an invoice from vendor and confirmation of the appropriate level of work completed.

1% will be deducted for each business day for late delivery based on the completion schedule.

FORT HAYS STATE UNIVERSITY

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CONTRACT AWARD

Date of Award: March 15, 2012

Contract Number: 12014

Fort Hays State University Purchasing Office
Telephone: 785-628-4251
E-Mail Address: purchasing@fhsu.edu
Web Address: http://www.fhsu.edu/adminfin/purchasing/

Item: **Develop Online Animated Courses**
Agency: Fort Hays State University
Location(s): Hays, KS

Term of Contract: March 15, 2012 through May 15, 2013 or upon completion of the courses.

Scope: This Contract shall cover the procurement to **Develop Online Courses** from the list below for Fort Hays State University, Hays, Kansas, during the contract period referenced above.

Contractors: eTown Solutions, LLC
1219 Rural Street
Emporia, KS 66801
PH: 620-481-1778
Contact Person: Steve Harmon, Owner
Email Address: etownsolutions@goetown.com
Web Address: www.etownsolutions.com

Prices: See Attached

Payment Terms: Net 45

Political Subdivisions: Pricing **is not** available to the political subdivisions of the State of Kansas.

The above referenced contract award was recently posted to the Fort Hays State University Internet website. The document can be downloaded by going to the following website:

http://www.fhsu.edu/purchasing/

CONDITIONS

Term of Contract: The term of this contract is from March 15, 2012 through May 15, 2013 or upon completion of the courses.

Conditions of Contract: The following terms and conditions of award are incorporated by reference and include: DA-45/146a; specifications and conditions of the proposal including any addenda; vendors response including any addenda, appendices and exhibits.

Order of Preference: Any conflict to the provisions of this contract and the documents incorporated by reference shall be determined by the following priority order:
a. Contract Provisions Attachment DA-45/146a;
b. Written modifications and addenda to the executed contract;
c. This contract document;
d. The above referenced Request for Proposal (RFP) including any addenda;
e. Contractors response including any addenda, appendices and exhibits.

Termination for Cause: The FHSU Purchasing Director may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
1. the Contractor fails to make delivery of goods or services as specified in this contract; or
2. the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The FHSU Purchasing Director shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as University may authorize in writing), the FHSU Purchasing Director shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

Termination for Convenience: The FHSU Purchasing Director may terminate performance of work under this contract in whole or in part whenever, for any reason, the FHSU Purchasing Director shall determine that the termination is in the best interest of Fort Hays State University. In the event that the FHSU Purchasing Director elects to terminate this contract pursuant to this provision, Purchasing shall provide the Contractor written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

Notices: All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be **IN WRITING** and addressed as follows:
Fort Hays State University
Purchasing Office
601 Park Street Sheridan Hall Rm 318
Hays, KS 67601

or to any other persons or addresses as may be designated by notice from one party to the other.

Invoices: Invoices shall be forwarded to the using agency in duplicate and shall state the following:
(1) date of invoice;
(2) contract number 12014
(3) itemization of all applicable charges;
(4) date of completion of work;
(5) net amount due per the payment schedule.

Mail invoices to:
Fort Hays State University
EnergyNET
Attn: Tim Cossaart, Assistant Director
600 Park Street
Hays KS 67601

Payment. Payment shall be made after receipt of goods or services in agreement with Kansas Law. Payments shall not be made for costs or items not listed in the vendor's bid response.

Non-competition. Contractor, individually or in cooperation with any third party, may not create any product which, in the reasonable opinion of the persons familiar with this product, is similar to or potentially compete with the product to be created pursuant to this contract. This prohibition begins on the date that this contract is fully executed by both parties and remains in effect until such time that the colleges listed below no longer offers courses towards a degree or certificate in the discipline for which the courses were developed.

Fort Hays State University Contacts:
Mike Michaelis, Director
EnergyNET
Phone: 785-628-4620
mwmichaelis@fhsu.edu

Tim Cossaart, Assistant Director
EnergyNET
Phone: 785-628-4611
tccossaart@fhsu.edu

Sabrina William, Online Course Developer
EnergyNET
Phone: 785-628-4612
slwilliam@fhsu.edu

Barton Community College Contacts:
Mike Baugh, Instructor
Phone: 620-792-9325,
baughm@bartonccc.edu

Ms. Elaine Simmons - Dean of Workforce Training and Community Education
Phone: 620-792-9214
simmonse@bartonccc.edu

Manhattan Technical College Contacts:
Marilyn Mahan, Vice President of Instructional Services
Phone: 785.587.2800 Ext 4101
marilynmahan@matc.net

Brent Boring, Instructor
Phone: 785.587.2800
brentboring@matc.net

Rex Fair, Instructor
Phone: 785.587.2800
rexfair@matc.net

North Central Technical College Contacts:
Kirby Shamburg, CDL Instructor
Phone: 785-738-9043
kshamburg@ncktc.edu

Mark Jones, Excavating Instructor
Phone: 785-738-9019
mjones@ncktc.edu

Pratt Community College Contact:
Joseph E. Varrientos, Ph.D., Dean of Technical Instruction / Assistant Vice President of Instruction
Phone: 620-450-2175
joev@prattcc.edu

Schedule

April 15, 2012	Outline of plan and timeline due to EnergyNET
May 15, 2012	Wire frame (template, or shell) due for review
November 15, 2012	Completion of Group I Course List (11 courses – 34 credit hours)
February 15, 2013	Completion of Group II Course List (7 courses – 16 credit hours)
May 15, 2013	Completion of Group III Course List (4 courses – 17 credit hours)
May 15, 2013	Conclusion of all work and delivery of final product by vendor

Course Deliverables: Develop the following 67 credit hours for on-line delivery; including instructional, curriculum, graphic, multimedia, web, animation, and simulation design; and assessment. **Courses may be moved from one group to another. Total credit hours for each group may change. Every effort will be made to keep credit hour totals for each group the same as planned.**

Group I

Course Name	Credit Hours
Barton Community College	
• DC Circuit Fundamentals	3
• AC Circuit Fundamentals	4
• Fundamentals of Natural Gas	3
• Gas Regulators Operations and Maintenance	2
Manhattan Area Technical College	
• Climbing Skills	4
• Pole Setting, Framing, and Rigging	5
North Central Kansas Technical College	
• Commercial Driver's License	1
• Trenching and Excavation Practices	2
Pratt Community College	
• Electrical Theory	3
• Conductor Installation and Repair	4
• Underground Distribution	3
Total	34

Group II

Barton Community College	
• Basic Corrosion Field Technician	3
• Intro to Natural Gas Distribution and Transmission Technologies/Techniques	2
• Electrical Devices & Controls I	3
Manhattan Area Technical College	
• Trucks and Equipment	3
• Employability Skills	1
Pratt Community College	
• Rubber Gloving and Hot Sticking	3
• System Coordination and Troubleshooting	1
Total	16

Group III

Barton Community College	
• Introduction to Programmable Logic Controllers	3
• Intermediate Natural Gas Distribution and Transmission Technologies/Techniques	2
Manhattan Area Technical College	
• Transformer Theory and Installation	8
Pratt Community College	
• Substations and Voltage Regulation	4
Total	17

Payment Schedule: In return for the delivery of the services identified in the RFP, Fort Hays State University agrees to pay eTown Solutions, LLC. the sum of **$196,850**. The parties agree that the project timeline and compensation shall be as follows:

- 25% ($49,212.50) of project cost within 45 days of receipt of a signed contract between FHSU and eTown Solutions.
- 25% ($49,212.50) of project cost at the mutually agreed upon completion of Group I.
- 25% ($49,212.50) of project cost at the mutually agreed upon completion of Group II.
- Final 25% ($49,212.50) of project cost upon receipt, test completion, and approval of Group III.

All payments will be made after receipt of an invoice from vendor and confirmation of the appropriate level of work completed.

1% will be deducted for each business day for late delivery based on the completion schedule.

State of Kansas
Department of Administration
DA-146a (Rev. 04-11)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 04-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue**: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

   Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

   The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."