

Professional and Technical Services Contract

This Professional and Technical Services Contract (this "Contract") is between the Minnesota Safety Council, a Minnesota nonprofit corporation ("MSC") and [REDACTED], a [STATE OF INCORPORATION] [TYPE OF BUSINESS] ("Contractor").

Recitals

- A. MSC is a chapter of the National Safety Council and has a mission to strengthen individuals, families, and organizations by preventing injuries and supporting safer, healthier lives;
- B. MSC partners with the Minnesota Department of Public Safety and its Office of Traffic Safety to fulfill State requirements for annual seatbelt surveys;
- C. Contractor submitted a response to MSC's Request for Proposal ("RFP") related to a statewide seatbelt survey; and
- D. MSC desires to engage Contractor to conduct the services detailed in the RFP and Contractor desires to be so engaged.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the value of which is acknowledged, the parties agree as follows:

Contract

1. Term; Time.

1.1 Effective Date. This Contract is effective as of [REDACTED], or the last date of signature below. The Contractor must not commence work or perform the Services (as defined herein) until this Contract is fully executed and the Contractor has been notified by MSC's Authorized Representative (as defined herein) that Contractor is authorized to begin.

1.2 Term. This Contract shall continue until [REDACTED], or until all obligations have been satisfactorily fulfilled, whichever occurs first (the "Term"), unless terminated pursuant to Section 18.

1.3 Time. The Contractor must comply with all the time requirements described in this Contract, the RFP, and any other timeline advised in writing by MSC's Authorized Representative. In the performance of this Contract, time is of the essence.

2. Contractor's Duties.

The Contractor is hereby engaged to provide the services detailed in the RFP and Contractor's Proposal Submission (the "Proposal Submission"), attached hereto as

Exhibit A and incorporated herein (the “Services”). Contractor shall perform the Services to the best of Contractor’s ability, utilizing such staff and resources as necessary to perform the Services to the highest industry standards.

3. Consideration and Payment.

3.1 Consideration. As full consideration for the Services provided by Contractor, MSC shall pay Contractor a total flat fee of \$ [REDACTED].

3.2 Expenses. MSC shall reimburse Contractor for reasonable travel and subsistence expenses actually incurred by Contractor in its performance of the Services (“Expenses”). Reimbursement of Expenses shall not exceed a total of \$ [REDACTED]. Notwithstanding the foregoing, all Expense reimbursement must be consistent with, and in no greater amount than provided in, the current “Commissioner’s Plan” established by the Commissioner of Minnesota Management and Budget which is incorporated herein by reference. The Contractor will not be reimbursed for Expenses incurred outside Minnesota unless Contractor has received prior written approval for out-of-state travel from the MSC Authorized Representative in writing. Minnesota will be considered the home state for determining whether travel is out of state.

3.3 Payment. Payment shall be made to Contractor as follows:

- (a) Invoices. Contractor shall submit to MSC itemized invoices for all Services and Expenses. MSC will promptly pay invoices following acceptance and approval by MSC’s Authorized Representative. Invoices must be submitted timely and according to agreed scheduled.
- (b) Retainage. Under Minn. Stat. § 16C.08, subd. 2(10), no more than ninety percent (90%) of the amount due Contractor pursuant to Section 3.1 may be paid until the final product of the Services has been reviewed by MSC. The balance due will be paid when MSC determines that the Contractor has satisfactorily fulfilled all the terms of this Contract.
- (c) Conditions of Payment: All Services must be performed to MSC’s satisfaction, as determined at the sole discretion of the Authorized Representative, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for Services found by MSC to be unsatisfactory or performed in violation of federal, state, or local law.

4. Authorized Representative.

MSC’s authorized representative for the purposes of this Contract is [REDACTED], or such other individual as MSC names in writing to Contractor (“Authorized

Representative”). The Authorized Representative will be responsible for monitoring the Contractor’s performance and has the authority to direct and manage the Services. If the Services are satisfactory, the Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is [REDACTED]. If the Contractor’s Authorized Representative changes during the Term, the Contractor must immediately notify the MSC Authorized Representative.

5. Indemnification.

Contractor shall indemnify, save, and hold harmless MSC, its officers, directors, agents, and employees (collectively, the “MSC Indemnitees”), from any and all losses, claims, causes of action, and costs, including reasonable attorneys fees, incurred by MSC Indemnitees that occur as a result of Contractor’s or its employees or agents’ (a) acts or omissions; (b) breach of any provision of this Contract; (c) breach of any of the representations or warranties made by Contractor in this Contract. The remedies in this Section 5 are not exclusive and MSC reserves all remedies available at law or in equity in the event Contractor does not fulfill its obligations under this Contract or breaches any representation or warranty.

6. State Audits.

Contractor expressly agrees and understands that pursuant to Minn. Stat. § 16C.05, subd. 5, the Contractor’s books, records, documents, and accounting procedures and practices relevant to this Contract and the Services (collectively, “Records”) are subject to examination by the MSC and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of the Term. Contractor agrees to maintain such Records and immediately produce any Records requested by MSC or any state agency upon request.

7. Government Data Practices and Intellectual Property.

7.1 Government Data Practices. The parties shall take all actions necessary to comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (“MGDPA”), as it applies to all data provided by the State under this Contract. Contractor agrees and acknowledges that the MGDPA applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract and that the civil remedies of MGDPA apply to the release of Records by either the Contractor or the State of Minnesota (“State”).

If the Contractor receives a request to release any data or Records relating to this Contract or the Services, the Contractor must immediately notify and consult with MSC’s Authorized Representative and the State as to how the Contractor should respond to the request. The Contractor’s response to the request shall comply with applicable law and any guidance from MSC or the State.

7.2 Intellectual Property Rights. All deliverables, work product, materials, data, documentation, reports, software, inventions, discoveries, improvements, and other intellectual property of any kind, whether or not patentable or copyrightable, that are conceived, developed, reduced to practice, or created by or on behalf of Contractor, alone or jointly with others, in the performance of services under this Contract (collectively, the “Work Product”) shall be deemed “works made for hire” to the fullest extent permitted by law for the benefit of the State. To the extent any Work Product does not qualify as a “work made for hire,” Contractor hereby irrevocably assigns, transfers, and conveys to MSC, for the benefit of and assignment to the State, all right, title, and interest in and to such Work Product, including all intellectual property rights therein, without additional consideration. MSC shall have the right to assign such rights to the State as required under its agreement with the State. Contractor agrees to execute and deliver such documents and take such further actions as may be reasonably requested by MSC or the State to evidence, perfect, or enforce the State’s ownership rights in the Work Product. Contractor shall not use, reproduce, distribute, or otherwise exploit the Work Product except as necessary to perform its obligations under this Contract or as otherwise expressly authorized in writing by MSC and the State. Notwithstanding the foregoing, Contractor shall retain ownership of its pre-existing intellectual property and any independently developed materials that are not created specifically for this Agreement (“Background IP”); provided, however, that Contractor hereby grants to MSC and the State a perpetual, irrevocable, non-exclusive, royalty-free, worldwide license (with the right to sublicense) to use, reproduce, modify, distribute, display, and perform such Background IP solely to the extent incorporated into or necessary to use the Work Product. Contractor represents and warrants that the Work Product shall be original to Contractor (except for properly licensed materials), and that the Work Product does not and will not infringe or misappropriate any intellectual property or proprietary rights of any third party. Contractor shall indemnify, defend, and hold harmless MSC and the State from and against any claims arising out of any breach of the foregoing warranty.

8. Representations and Warranties.

The Contractor represents and warrants to MSC: (a) all information submitted by Contractor in the Proposal Submission is accurate including, but not limited to, Contractor’s representations regarding conflicts of interest, Contractor and its employees’ qualifications and experience; (b) the execution of this Agreement by Contractor represents a valid and binding obligation of Contractor and the individual signing on Contractor’s behalf is authorized to sign on its behalf; (c) Contractor has, and shall maintain in full force and effect throughout the Term, the insurance detailed in the RFP; (d) Contractor is in and shall remain in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers’ compensation insurance coverage; (e) Contractor meets the definition of “Responsible contractor” in Minn. Stat. § 16C.285, subd. 3., and (f) Contractor shall comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600, if applicable.

9. Workers’ Compensation and Other Insurance.

The Contractor shall not commence work or perform any Services under this Contract until Contractor has obtained all the insurance specified in the RFP. Contractor agrees to provide Certificates of Insurance to MSC's Authorized Representative prior to the commencement of work and notify MSC in the event of any change to or cancellation of such insurance policies.

The Contractor agrees and understands that Contractor's employees and agents are not and shall not be considered MSC employees. Any claims that may arise under the Minnesota Workers' Compensation Act or any other state or federal law relative to Contractor's employees and agents and any claims made by any third party as a consequence of any act or omission on the part of any such employees or agents are in no way MSC's obligation or responsibility and Contractor shall indemnify MSC against any liability related to such third party claims.

10. Debarment.

Contractor certifies that neither it nor any of its principals are presently debarred or suspended by the State or any of its departments, commissions, agencies, or political subdivisions. Contractor agrees and understands this certification is a material representation upon which this Contract award was based. Contractor shall provide immediate written notice to MSC's Authorized Representative if at any time Contractor learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

Contractor understands that Federal money will be used or may potentially be used to pay for all or part of the Services, and certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the RFP and pursuant to Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

11. Publicity and Endorsement.

- (a) Publicity. Any publicity regarding this Contract or the Services must identify MSC as the sponsoring agency and must not be released publicly without prior written approval from the MSC's Authorized Representative. For purposes of this Section 11, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the survey, any publications, or Services.
- (b) Endorsement. The Contractor must not claim that the State endorses its products or services.

12. Governing law, Jurisdiction, and Venue.

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings arising out of or related to this Contract shall be solely venued in the appropriate state or federal court with competent jurisdiction sited in Ramsey County, Minnesota.

13. Data Disclosure.

Contractor agrees that under Minn. Stat. § 270C.65, subd. 3 and other applicable law, data of Contractor may be released to Federal and State agencies, and explicitly consents to disclosure of its social security number, Federal employer tax identification number, State tax identification number, and any other information provided to MSC, the State, to federal and state agencies, and State personnel involved in the payment of State obligations which may be used in the enforcement of Federal and State laws and could result in action requiring the Contractor to file State tax returns, pay delinquent State tax liabilities, if any, or pay other State liabilities.

14. Payment to Subcontractors.

Contractor shall pay all subcontractors for all undisputed services provided, less any retainage, within ten (10) calendar days of receipt of payment from MSC, as required by Minn. Stat. § 16A.1245. Contractor shall pay interest to a subcontractor, at the rate of one and one-half percent (1.5%) per month or any part of a month, on any undisputed amount not paid on time to such subcontractor.

15. Termination.

15.1 Termination. This Contract may terminate prior to the end of the Term as follows: (a) by mutual agreement; (b) by MSC, at any time, with or without cause, upon thirty (30) days' written notice to the Contractor, (c) immediately with written notice to Contractor in the event of Contractor's breach of any provision of this Agreement, (d) immediately with written notice to Contractor in the event MSC does not obtain funding for the Services or if funding cannot be continued at a level sufficient to allow for payment of the Services. Any written notice shall be provided by a party to the Authorized Representative of the other party.

15.2 Termination Provisions. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis and subject to availability of funds, for Services that have been satisfactorily performed prior to the termination date. MSC shall not be obligated to pay for any Services that are provided after notice and the effective date of termination. MSC will not be assessed any penalty if this Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds.

16. Non-Discrimination.

The Contractor shall comply with Minn. Stat. § 181.59 and any other applicable Federal or State antidiscrimination laws, rules, regulations, and guidance. The Contractor shall not discriminate against any person in violation of applicable law.

17. Assignment; Amendments; Waiver, and Contract Complete.

17.1 Assignment. The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of MSC and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.

17.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.

17.3 Waiver. If MSC fails to enforce any provision of this Contract, that failure does not waive the provision or MSC's right to enforce it, or any of the other provisions of this Contract.

17.4 Contract Complete. This Contract contains all negotiations and agreements between the MSC and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

18. Independent Contractor.

Contractor is and shall at all times be deemed to be an independent contractor and not an employee, agent, partner, or joint venturer of MSC. Nothing in this Agreement shall be construed to create any employment, agency, or fiduciary relationship between Contractor and MSC. Contractor shall retain the sole and exclusive right to control and direct the manner, means, and method by which the Services are performed, subject only to the requirement that Contractor comply with the terms of this Agreement, the RFP, and the Proposal Submission, and achieve the results specified by MSC. Contractor shall supply, at its own expense, all tools, equipment, materials, and labor necessary to perform the Services, unless otherwise expressly agreed in writing. Contractor shall have no authority to bind or obligate MSC in any manner whatsoever, except as expressly authorized in writing by MSC. Contractor shall be solely responsible for all compensation paid to its employees or subcontractors, if any, and for all federal, state (including Minnesota), and local taxes, withholdings, and other statutory or regulatory obligations, including without limitation income taxes, employment taxes, Social Security contributions, unemployment insurance, and workers' compensation insurance. Contractor agrees to indemnify and hold harmless MSC from and against any claims, liabilities, penalties, or expenses arising out of Contractor's failure to satisfy such obligations. Contractor acknowledges and agrees that neither Contractor nor any of its employees or subcontractors are eligible for, and shall not participate in, any employee benefit plans, programs, or arrangements of MSC, including but not limited to health insurance, retirement plans, paid time off, or other fringe benefits.

19. Survival.

Sections 5, 6, 7, 8, 9, 10, 15 and 18 shall survive the expiration or termination of this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date written above.

MINNESOTA SAFETY COUNCIL:

By:
Its:

Date: _____

CONTRACTOR:

By:
Its:

Date: _____

SAMPLE

**Exhibit A
Proposal Submission**

930-9153-2699, v. 1

SAMPLE