

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, entered into this _____ day of _____, 20____, by and between _____ and _____ (hereinafter referred to as the "Contractor") _____ (hereinafter referred to as the "Agency")

WITNESSETH THAT:

Whereas the Agency desires to engage the Contractor to render certain technical or professional services hereinafter referred to as the "Project."

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Employment of Contractor**

The Contractor represents that he has, or will secure at his own expense, all personnel required in the performance of the services covered by this Contract. Such personnel shall not be employees of, or have any contractual relationship with, the Agency.

All of the Services required hereunder will be performed by the Contractor, or under his 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.

No payment, gratuity, or offer of employment may be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract order. Further, Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order under it, it is conclusively presumed that the amount of the kickback was included in the price of the subcontract or order and ultimately borne by the State or governmental entity and is recoverable hereunder from the subcontractor making the kickback. Recovery from one offending party does not preclude recovery from other offending parties. (Section 8-13-790 of the 1976 CODE OF LAWS OF SOUTH Carolina, as amended)

The Contractor shall be liable for and pay all taxes required by local, State or federal governments, including but not limited to social security, worker's compensation, and employment security as required by law. No employee benefits of any kind shall be paid by the Agency to or for the benefit of the Contractor or his employees or agents by reason of this Contract.

2. **Scope of Services** (insert additional pages, or attach Appendix if necessary)

The Contractor shall do, perform, and carry out, in a satisfactory and proper manner, as determined by the Agency, the following services:

3. **Reporting Required**

The Contractor shall furnish the Agency on a _____ basis, reports in the manner and meeting the specifications listed below:

4. **Time of Performance**

The services of the Contractor are to commence as soon as practicable after the execution of this Contract and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of this Contract, but in any event all of the services required hereunder shall be completed by _____.

5. **Compensation**

It is expressly understood and agreed that in no event will the total compensation, and/or reimbursement to be paid hereunder exceed the maximum sum of _____ (\$ _____) for all of the services required.

6. **Method of Payment**

The Agency will pay to the Contractor the amount, or amounts set forth in Paragraph 5, which shall constitute full and complete compensation for the Contractor's services hereunder. (Payments shall be made only to the Contractor, and the Agency shall have no obligation to any other person for expenses incurred by the Contractor.) Such sum will be paid in the following manner, in every case, subject to receipt of a statement/bill and required documentation indicating that he has performed the work under this Contract in conformance with the terms of the Contract:

7. **TERMS AND CONDITIONS**

A. Subcontractors None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the Agency.

B. Amendments Any changes to this Contract, which are mutually agreed upon by and between the Agency and the Contractor, shall be incorporated in written amendments to this Contract.

C. Insurance Contractor shall not hold the Agency responsible for any liability for loss or damage to persons or property arising from acts of the Contractor or his employees in performance of this Contract; and the Contractor shall maintain at all times automobile liability policies, and such other insurance as may be required and in such amounts as may be required by the Agency. Evidence of such insurance shall be furnished to the Agency upon request.

D. Law Applicable This contract is made under and shall be construed in accordance with the laws of the State of South Carolina. By executing this Contract, the Contractor agrees to submit himself to the jurisdiction of the courts of the State of South Carolina for all matters arising or to arise hereunder, including but not limited to performance of said Contract and the payment of all licenses and taxes of whatever kind or nature applicable thereto.

E. Termination This Contract may be terminated by giving written notice of such termination at least thirty (30) days prior to the effective date of such termination. Neither party, by such termination, shall be deemed to have waived any rights under this Contract.

The Agency may terminate this contract at any time for failure of Contractor to perform, or for any other good and sufficient cause. In such event, Contractor shall be entitled to no compensation beyond date of termination, other than for such part of the Contract as has been performed, nor to reimbursement for expenses not incurred prior to date of such termination; and contractor shall be liable to Agency for all loss and damage arising or to arise to Agency from such termination, including the cost to Agency to complete performance or to obtain other Contractors to complete performance hereof, and including attorney's fees and costs. The Agency may withhold from amounts due to the Contractor any sum necessary to repay in whole or in part all loss or damage arising or to arise to Agency from such termination.

F. Performance In the event the Contractor fails to perform the services described herein and has previously received financial assistance from the Agency, the Contractor shall reimburse the Agency to the full extent of payments made. However, if the services described herein are partially performed, and the Contractor has previously received financial assistance from the Agency, the Contractor shall proportionally reimburse the Agency for payments made, except as set forth in G below.

G. Indemnification for Legal or Consultant Services If this contract is for legal or consultant services, it is subject to the provisions of Section 11-9-105 of the 1976 CODE OF LAWS OF SOUTH CAROLINA as amended. "Any contract for legal or consultant services entered into by a state agency or institution shall include a provision which requires completion of all services. The Provisions shall further require that in the event all services are not fully rendered as provided for in the contract, any monies which have been paid by the agency under the contract must be refunded to the agency along with a twelve (12) percent penalty."

H. Performance Bond If the Agency requires the Contractor to post a bond to assure performance of this Contract, such bond shall be a certified cashier's check or a surety bond issued by a surety authorized to do business in the State of South Carolina. Such bond shall be in an amount as required by the Agency.

I. Appropriations Notwithstanding any other provisions of this Contract, the parties hereto agree that the compensation and expenses hereunder are payable by the Agency from appropriations, grants, and monies received by the Agency from the State Legislature and other governmental entities. In the event sufficient appropriations, grants and monies are not made to the Agency to pay the compensation and expenses hereunder for any fiscal year; this Contract shall terminate without further obligation of the Agency. In such event, the Agency shall certify to the Contractor the fact that sufficient funds have not been made available to the Agency to meet the obligations of this Contract; and such written certification shall be conclusive upon the parties.

J. Confidential Information Any reports, information, data, etc., given to or prepared or assembled by the Contractor under this Contract which the Agency requests to be kept confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

K. Copyright Except as otherwise provided in the terms and conditions of this contract, the contractor is free to copyright any books, publications or other copyrightable materials developed in the course of or under this contract. However, the federal awarding agency and state funding agency (SFA) reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government and SFA purposes:

- (1) the copyright in any work developed through this contract; and
- (2) any rights of copyright to which the subcontractor purchases ownership with support through this grant.

The federal government's rights and the SFA's rights identified above must be conveyed to the publisher and the language of the publisher's release form must ensure the preservation of these rights.

L. Discrimination The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin or handicap. The Contractor shall take affirmative action to ensure that applicants for employment, and the employees are treated during employment, without regard to their race, color, religion, age, sex, national origin, or handicap.

M. Audit Records with respect to all matters covered by this Contract shall be made available for audit and inspection by the Agency, the grant agency and/or their duly authorized representatives.

N. Retention of Records Records for non-expendable property purchased totally or partially with contract funds must be retained for three years after its final disposition. All other pertinent contract records including financial records, supporting documents and statistical records shall be retained for a minimum of three years after the final expenditure report and all other pending matters are closed. However, if any litigation, claim or audit is started before the expiration of the three-year period, then records must be retained for three years after the litigation, claim or audit is resolved.

O. Utilization of Minority Businesses Contractors are encouraged to utilize qualified minority firms where cost and performance of major contract work will not conflict with funding or time schedules.

P. Conflict of Interest Personnel and other officials connected with this contract shall adhere to the requirements given below.

(1) Advice: No official or employee of a state or unit of local government or of non-government contractors/subcontractors shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise in an proceeding, application, request for a ruling or other determination, contract, grant cooperative agreement, claim, controversy, or other particular matter in which these funds are used, where to his knowledge he or his immediate family, partners, organization, other than a public agency in which he is serving as officer, director, trustee, partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

(2) Appearance: In the use of these contract funds, officials or employees of state or local units of government and non-governmental contractors/subcontractors shall avoid any action which might result in, or create the appearance of:

- a) Using his/her official position for private gain;
- b) Giving preferential treatment to any person;
- c) Losing complete independence or impartiality;
- d) Making an official decision outside official channels; or
- e) Affecting adversely the confidence of the public in the integrity of the government or the program.

Q. Prohibition of Gratuities Section 8-13-705 of the 1976 CODE OF LAWS OF SOUTH CAROLINA, as amended provides: “(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

- (1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;
- (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
- (3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities.”

“A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than ten years and a fine of not more than ten thousand dollars and is permanently disqualified from being a public official or a public member. A public official, public member, or public employee who violates the provisions of this section forfeits his public office, membership, or employment.” “This section does not apply to political contributions unless the contributions are conditioned upon the performance of specific actions of the person accepting the contributions nor does it prohibit a parent, grandparent, or other close relative from making a gift to a child, grandchild, or other close relative for love and affection except as otherwise provided.”

R. Ownership of Material Ownership of all data, material, and documentation originated and prepared for Agency pursuant to this contract shall belong exclusively to the Agency. Title to any equipment purchase pursuant to this contract is vested in the Contractor. Nonexpendable equipment must be appropriately inventoried and must be used for purposes consistent with the purpose of this contract. Any proposed disposition of nonexpendable property must first be approved by the Agency.

S. Compliance with Federal Requirements State or federal requirements that are more restrictive shall be followed.

T. Section 504 of the Rehabilitation Act of 1973 (Handicapped)

All recipients of federal funds must comply with Section 504 of the Rehabilitation Act of 1973 (The Act). Therefore, the federal funds recipient pursuant to the requirements of The Act hereby gives assurance that no otherwise qualified handicapped person shall, solely by reason of handicap be excluded from the participation in, be denied the benefits of or be subject to discrimination, including discrimination in employment, in any program or activity that receives or benefits from federal financial assistance. The recipient agrees it will ensure that requirements of The Act shall be included in the agreements with and be binding on all of its subgrantees, contractors, subcontractors, assignees or successors.

U. Disclosure of Federal Participation (aggregated value of \$500,000 or more) In compliance with Section 623 of Public Law 102-141, the subgrantee agrees that no amount of this award shall be used to finance the acquisition of goods and services (including construction services) for the Project unless the subgrantee:

(1) specifies in any announcement of the awarding of the contract for the procurement of the goods and services involved (including construction services) the amount of federal funds that will be used to finance the acquisition; and

(2) expresses the amount pursuant to paragraph (a) as a percentage of the total cost of the planned acquisition.

The above requirements only apply to procurement for goods or services (including construction services).

V. Americans with Disabilities Act of 1990 (ADA) The Contractor must comply with all requirements of the Americans with Disabilities Act of 1990 (ADA), as applicable.

W. Political Activity None of the funds, materials, property, or services provided directly or indirectly under this contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office, or otherwise in violation of the provisions of the "Hatch Act".

ATTACHMENTS: (as applicable)

X. Debarment Certification The contractor must comply with Federal Debarment and Suspension regulations prior to entering into a financial agreement with the subgrantee for any transaction as outlined below:

a) Any procurement contract for goods and services, regardless of the type, expected to equal or exceed the Federal procurement small purchase threshold (which is \$25,000 and is a cumulative amount from all federal funding sources).

b) Any procurement contract for goods and services, regardless of amount, under which the contractor will have a critical influence on or substantive control over the transaction.

Y. Drug-Free Workplace Certification Contractor (All State Agencies and contractors receiving \$50,000 or more from a State Agency) must complete and sign the attached Certification form regarding Drug-Free Workplace.

Z. Special Terms and Conditions The Contractor agrees to abide by all other Terms and Conditions as specified in the basic grant under which this Contract is funded (See Appendix ____ which is attached and made a part of this Contract).

IN WITNESS WHEREOF, the Contractor _____
(Contractor Name)

and _____ have executed this agreement as of the date first
(Agency Name)
above written.

CONTRACTOR NAME AND ADDRESS

Zip _____ Phone No. _____

Signature Attest for Contractor

Contractor's Signature

Printed or Typed Name and Title

Contractor: Printed or Typed Name

Title

Signature Attest for Contractor

Contractor's Signature

Printed or Typed Name and Title

Contractor: Printed or Typed Name

Title

Signature Attest for Agency

Agency Official Signature

Printed or Typed Name and Title

Agency: Printed or Typed Name

Title

Signature Attest for Agency

Agency Official Signature

Printed or Typed Name and Title

Agency: Printed or Typed Name

Title

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under the applicable CFR covering New Restrictions on Government-wide Debarment and Suspension (Nonprocurement). The certification shall be treated as a material representation of fact upon which reliance will be placed when the Agency determines to award the covered transaction or cooperative agreement.

As required by Executive Order 12549, Debarment and Suspension, and implemented under the applicable CFR, for prospective participants in covered transactions, as defined in the applicable CFR-

- A. The applicant certifies that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal State or local) with commission of any of these offenses enumerated in paragraph (1) (b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default; and
- B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

Contractor's Signature

Address: _____

Printed or Typed Name

Title

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under the applicable CFR covering New Restrictions and Government-wide Requirements for Drug-Free Workplace. The certification shall be treated as a material representation of fact upon which reliance will be placed when the Agency determines to award the covered transaction or cooperative agreement.

A. A DRUG-FREE WORKPLACE (CONTRACTORS OTHER THAN INDIVIDUALS) - APPLICABLE TO CONTRACTORS RECEIVING \$50,000 OR MORE FROM A STATE AGENCY AND ALL STATE AGENCIES REGARDLESS OF CONTRACT AMOUNT.

As required by the S.C. Drug-Free Workplace Act #593 of 1990 and the Federal Drug-Free Workplace Act of 1988 and implemented under the applicable CFR –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an on-going drug-free awareness program to inform employees about-
 - (1) The dangers of drug abuse in the workplace;
 - (2) The contractor's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the contract, the employee will –
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to the State Funding Agency. Notice shall include the identification number(s) of each affected contract;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-
 - (1) Taking appropriate personnel action against such an employee up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employees to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. DRUG-FREE WORKPLACE (CONTRACTORS WHO ARE INDIVIDUALS) - APPLICABLE TO CONTRACTORS RECEIVING \$50,000 or MORE FROM A STATE AGENCY.

As required by the S.C. Drug-Free Workplace #593 of 1990 –

- (a) As a condition of the contract I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the contract; and
- (b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, I will report the conviction, in writing, within 10 calendar days of the conviction to the State Funding Agency.

Signature of Contractor

Typed Name and Title