

CONTRACT FOR CONSULTING SERVICES MS0905

This Agreement, entered into this 18 day of May, 2009, by and between Jennifer G. Branstetter, hereinafter called the "consultant" and the Commonwealth of Pennsylvania, acting by and through the Office of Attorney General, hereinafter called the "OAG."

Whereas, the OAG has a need for professional consulting services; and

Whereas, the consultant is qualified to and has agreed to perform such professional consulting services.

In consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Services: The consultant shall perform the services described in Appendix A of this Agreement.

2. Compensation: The consultant shall be compensated by the OAG for the services contracted at a rate of \$35.00 per hour.

(a) The consultant shall be reimbursed for all reasonable, actual, ordinary and necessary expenses for travel, meals, and lodging, incurred by the consultant to fulfill the obligations under this agreement. The consultant shall retain all receipts and shall provide the OAG with copies. Mileage reimbursement shall be made in accordance with the travel regulations applicable to the OAG for the use of personally-owned motor vehicles. Expenses for lodging shall be limited to the single-occupancy rate at the nearest Holiday Inn and the amount of reimbursement for meals shall be limited to the highest priced meal for the appropriate time of day at the nearest Holiday Inn.

(b) Reasonable, actual, ordinary and necessary expenses for other special expenses required for and used solely in the fulfillment of this Agreement should be preapproved by the Director of Communications. The consultant shall retain all receipts and shall, upon request of the OAG, provide any necessary documentation.

3. Term of Agreement: The term of this Agreement shall run month to month until cancelled in writing with ten (10) days notice by either party but no later than June 30, 2011; subject to other provisions of this Agreement, including Paragraphs 11 and 12 herein.

(a) The OAG shall not be liable to pay the consultant for any services or work performed or expenses incurred before the effective date of this Agreement.

- (b) The term of this Agreement may be extended by and at the sole option of the OAG where a continued need exists for the services of the consultant and there has been no termination under this Agreement. The consultant agrees that the extension of this Agreement shall be on the same terms and conditions as the original Agreement except as otherwise agreed to in writing by the parties.

4. Billing: The consultant shall submit monthly invoices to the OAG's Director of Communications for services performed during each such period.

- (a) Each invoice shall be itemized listing the services performed, by date, by hours worked and by rate.
- (b) The OAG will make its best efforts to make payments on invoices within 45 days of their rendering.

5. Consultation: The consultant shall keep the OAG fully informed as to the progress of all matters covered by this Agreement. The consultant shall cooperate with, and shall be responsible directly to, the OAG's Director of Communications and other administrative officials as designated by the Director of Communications on all significant matters of strategy and tactics. The duty of the consultant shall be to advise and recommend actions to the OAG through the OAG's Director of Communications and designees, and to carry out to the best of her ability their directions. The consultant shall promptly furnish the OAG with copies of all correspondence in connection with the services rendered under this Agreement, and such additional documents as may be requested.

6. Subcontracting: Subcontracting, assignment, or transfer of all or part of the interest of the consultant in the work covered by this Agreement shall be prohibited without prior written consent of the OAG. In the event the OAG gives such consent, the terms and conditions of this Agreement shall apply to and bind the party or parties to whom such work is subcontracted, assigned, or transferred as fully and completely as the consultant is hereby bound and obligated.

7. Ownership of Documents: All documents, data and records produced by the consultant in carrying out the obligations and services hereunder, without limitation and whether preliminary or final, are and shall become and remain the property of the OAG.

- (a) The OAG shall have the right to use all such documents, data and records without restriction or limitation and without additional compensation to the consultant and the consultant shall have no right or interest therein.
- (b) Any documents, data and records given to or prepared by the consultant under this Agreement shall not be made available to any individual or organization by the consultant without prior written approval of the OAG. Any information secured by the consultant from the OAG in connection with carrying out the services under this Agreement shall be kept confidential unless disclosure of such information is approved in writing by the OAG or is directed by a court or other tribunal of competent jurisdiction.

- (c) Notwithstanding the provisions of Paragraphs 5 and 7 of this Agreement, the consultant may retain copies of documents delivered to the OAG.

8. Contract Changes: Any modification or change to this Agreement shall be incorporated in a written amendment to this Agreement signed by both parties and executed in the same manner as this original Agreement and in accordance with applicable law.

9. Conflict of Interest: The consultant, by signing this Agreement, covenants that it has no undisclosed public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest which does or may conflict in any manner with the performance of the services or obligations under this Agreement. Any such conflicts shall be disclosed to the OAG and the OAG shall determine whether such conflict is cause for termination of this Agreement. The consultant further covenants that, in the performance of this contract, no person having such interest shall be employed by or associated with consultant.

10. Employment Status:

- (a) Services rendered pursuant to this Agreement are not rendered as an employee of the Commonwealth of Pennsylvania and amounts paid pursuant to this Agreement do not constitute compensation or wages paid to an employee.
- (b) The consultant is an independent contractor and the OAG assumes no liability for actions of the consultant under this Agreement.

11. Termination: Notwithstanding any contrary provision in this Agreement, this Agreement may be terminated at the option of the OAG upon ten (10) days' written notice to the consultant, unless the termination is for cause, in which case the OAG may terminate without advance notice. If the OAG elects to terminate, the consultant shall be entitled to payment for services rendered under the Agreement up to the time of termination.

12. Termination for Funding: The OAG's obligations hereunder shall cease immediately, without further payment being required, in any year for which the General Assembly of the Commonwealth of Pennsylvania fails to make an appropriation sufficient to pay such obligation and also when there no longer exists funding for the services from available sources. The OAG shall give the consultant notice of such termination for funding as soon as practicable.

13. Nondiscrimination: The consultant shall comply with all applicable provisions of state and federal constitutions, laws, regulations and judicial orders pertaining to nondiscrimination and equal employment opportunity, including the provisions of the Nondiscrimination Clause, which is attached hereto as Appendix B and incorporated by reference.

14. Contractor Integrity Provisions: The consultant agrees to comply with the Contractor Integrity Provisions which are attached hereto as Appendix C and incorporated by reference.

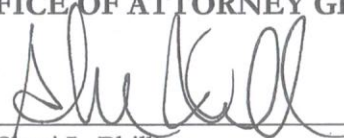
15. Applicable Law: This Agreement and the consultant's obligations and services hereunder are hereby made and must be performed in compliance with all applicable federal and state laws. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

16. Hold Harmless: The consultant shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands and actions based upon or arising out of any activities performed by the consultant and its employees and agents under this contract and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

In Witness Whereof, the OAG and Jennifer G. Branstetter, have caused this Agreement to be executed on the date and year first above written.

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL**

By: 
Consultant

By: 
Sheri L. Phillips
Director
Management Services Division

Approved as to form and legality:


Office of Attorney General

I hereby certify that funds in the amount
of \$ 15,000⁰⁰ are available under
Expenditure Symbol:
1006308000-1411309000-6341100


Comptroller Section

APPENDIX A

Description of Services

Consult on development and maintenance of OAG outreach projects; provide advice on brochures, media handouts, videos and promotional pieces; meet with vendors and coalition groups to discuss projects and options; and provide advice and training to OAG staff members for the following projects or any additional related education and outreach projects that may be requested:

1. Operation Safe Surf
 2. Truth & Choices: Drug and Alcohol Abuse
 3. School Safety Project
 4. Stop Gun Violence
 5. Elder Abuse Outreach
 6. Life Smarts
 7. Cable TV Show
 8. Cyber Bullying
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APPENDIX B

Nondiscrimination Clause

During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employee, applicant for employment, independent Contractor, or any other person because of race, color, religious creed, disability, ancestry, national origin, age or sex. Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, disability, ancestry, national origin, age or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

2. Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, disability, ancestry, national origin, age or sex.

3. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

4. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory procedures.

6. Contractor shall comply with all state and federal laws, prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.

7. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts, by the contracting agency for purposes of investigation to ascertain compliance with the provisions of this clause. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency.

8. Contractor shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.

9. Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.

10. Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

APPENDIX C

Contractor Integrity Provisions

1. Definitions

- (a) Confidential Information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
- (b) Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
- (c) Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than five percent interest.
- (d) Financial Interest means:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (e) Gratuity means any payment or more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

2. The Contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations or other requirements that govern contracting with the Commonwealth.

3. The Contractor shall not disclose to others any confidential information gained by virtue of this agreement.

4. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

5. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

6. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.

7. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

8. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

9. The Contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.

10. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the Contractor for a period of three years beyond the termination of the contract unless otherwise provided by law.

11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.