**SERVICES AGREEMENT FOR SMSD EXPENDITURES**

 This Services Agreement (“Agreement”) is made and entered into by and between the **Stafford Municipal School District (“SMSD”),** located in Stafford Texas 77477, and \_\_\_\_\_\_\_\_\_ (“Contractor”), located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for Contractor to provide services to SMSD in accordance with the terms and conditions specified herein.

**Recitals**

Both SMSD and Contractor desire to set forth in writing the terms and conditions of their agreement. In consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound agree as follows:

**1. Purpose.** SMSD agrees to retain Contractor and Contractor agrees to provide services to SMSD as Contractor and to perform the duties and all necessary labor and resources needed to provide the services set forth in Paragraph 3 – Scope of Work. Contractor shall also perform such other related services and duties as are customarily performed by a Contractor in a similar position.

**2. Term.** This Agreement is for services beginning \_\_\_\_\_\_\_\_\_\_ and ending \_\_\_\_\_\_\_\_\_\_\_\_ (“Term”). All extensions of this Agreement shall be subject to the terms and conditions specified herein.

**3. Scope of Work.** Exhibit A includes a detailed Scope of Work that sets out the services (hereinafter “Services”) Contractor agrees to provide.

**4. Independent Contractor Status.** It is the intention of the parties that Contractor be an independent contractor and not an employee, agent, joint venturer, or partner of SMSD. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between SMSD and either Contractor or any employee or agent of Contractor. As an independent contractor, Contractor will be solely responsible for determining the means and methods for performing the Services and shall furnish all tools, materials, transportation, and personal incidentals necessary in the performance of the Services. Contractor shall be responsible for any and all applicable social security and personal income taxes that may become due as a result of any payments made by SMSD hereunder and Contractor shall indemnify and hold SMSD harmless in this regard.

**5. Review of Progress.** Contractor will work to meet all timelines mutually established by Contractor and SMSD. SMSD reserves the right to monitor the progress of Contractor.

**6. Changes & Amendments.** During the Term of the Agreement (see Paragraph 2), SMSD and Contractor reserve the right to make changes to the Services the Contractor is required to provide pursuant to this Agreement. This Agreement may be amended only by the mutual agreement of the parties, in writing to be attached to and incorporated in this Agreement. All such changes shall be made in writing and agreed to by both parties.

**7. Assignment.** Neither this Agreement nor any duties or obligations under it shall be assignable by Contractor without the prior written acknowledgement and authorization of SMSD.

**8. Compensation.** SMSD will pay Contractor an amount not to exceed $\_\_\_\_\_\_\_ plus expenses of $\_\_\_\_\_\_\_\_ per day for Services provided in Exhibit A. Contractor will invoice SMSD periodically throughout the Term of the Agreement in accordance with Section 29 of this Agreement. SMSD is Texas sales and use tax exempt and will not reimburse Contractor for any Texas sales taxes incurred by Contractor. In the event that any payment(s) to Contractor under this Agreement are subsequently disallowed by a state or federal grant awarding agency or in the event that SMSD is required to refund any funding received from a state or federal grant awarding agency relating to Contractor’s Work, to the maximum extent permitted by applicable law, Contractor shall repay to SMSD, on demand, the amount of any such disallowed costs and/or refund. SMSD may, in its sole discretion, deduct the amount(s) of any such disallowed costs and/or refund(s) from subsequent payments to Contractor under this Agreement.

**9. Intellectual Property.** Contractor represents that it has all intellectual property rights necessary to enter into and perform its obligations in this Agreement.

**10. Ownership of Work Product.** All work product, including any concepts, products, software, research, reports, studies, data, photographs, negatives, or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this Agreement will be deemed works for hire and the exclusive property of SMSD, the Texas Education Agency, the State of Texas, and/or the federal government, as applicable. Contractor shall deliver all such materials to SMSD upon completion, termination, or cancellation of this Agreement. Any programs, data, or other materials furnished by SMSD for use by Contractor in connection with the Services performed under this Agreement will remain SMSD’s property. Any pre-existing programs, data, or other materials furnished and owned by Contractor for use by Contractor in connection with the Services performed under this Agreement will remain Contractor’s property.

**11. Professional Services.** This Agreement (check applicable box) is / is not for professional services and governed by the Professional Services Procurement Act, Tex. Gov’t Code Chp. 2254. Contractor represents and warrants that Contractor has demonstrated competence and possesses qualifications to perform the Services and is performing the Services for a fair and reasonable price. Contractor further represents and warrants that the professional fees under the Agreement do not exceed any maximum provided by law.

**12. Conflict of Interest.** During the Term of Contractor’s service to SMSD, Contractor shall not, directly or indirectly, whether for Contractor’s own account or for or with any other person or entity whatsoever, employ, solicit, or endeavor to entice away any person who is employed by SMSD.

**13. Criminal History Certification.**  Contractor shall complete the “Criminal History Certification” regarding the criminal history of covered employees and the “Felony Conviction Notice,” both of which are incorporated by reference herein. Noncompliance or misrepresentation regarding these certifications may be grounds for termination of this Agreement.

**14. Indemnity.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless SMSD, its trustees, officers, employees, and agents from and against all liability, loss, expense (including reasonable litigation costs and attorney’s fees), or claims for injury or damages arising out of the performance of this Agreement (collectively, “Claim”) to the extent the Claim arises from the negligence, willful act, breach of contract, or violation of law by Contractor, its employees, agents, contractors, or subcontractors.

**15. Non-appropriation of funds.** The Term of this Agreement is a commitment of SMSD current revenue only. Notwithstanding anything to the contrary in this Agreement, SMSD is obligated to make payments only as approved each year by SMSD’s Board of Trustees. SMSD’s Board of Trustees retains the right to terminate the Agreement at the expiration of each budget period of SMSD. To the extent that SMSD will use federal grant funds to fulfill its obligations under this Agreement, Contractor acknowledges that federal funds will be used to pay for all or a portion of funds due under this Agreement and that this Agreement is only effective upon receipt of the Notice of Grant Award (“NOGA”) by SMSD from the awarding agency. As such, if SMSD does not receive sufficient funding for the services provided in this Agreement, SMSD may terminate this Agreement without penalty or further obligation to Contractor, at any time upon written notice to Contractor. Services rendered in accordance with this Agreement shall be funded by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[funding source(s)]*. Payment for services rendered shall be allocated as follows: \_\_\_\_\_% funded by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[funding source]*; and \_\_\_\_% funded by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[additional funding source, if applicable]*.

**16. Non-Exclusivity.** Nothing in this Agreement may be construed to imply that Contractor has the exclusive right to provide SMSD Services. During the Term of this Agreement, SMSD reserves the right to use all available resources to procure other services as needed and doing so will not violate any rights of Contractor.

**17. Performance.** Contractor agrees that Contractor’s Services will be performed with reasonable care, skill, judgment, and experience in a professional business-like manner, with no direct supervision from SMSD. If Contractor is unable to complete the work in this manner based on the mutually agreed upon time, Contractor shall notify SMSD’s Director of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in writing.

**18. Termination.** Either party for any reason upon thirty (30) days written notice may terminate this Agreement without cause. SMSD will be responsible for payment for Services that have been accepted by SMSD up to the termination date.

SMSD may, by written notice, immediately terminate this Agreement if Contractor has defaulted in whole or in part, refuses or fails to comply with the provisions of this Agreement, fails to make progress, does not cure such failure after written notice within a reasonable period of time, or fails to perform the Services within the same time period specified or any written extension thereof. In such event, SMSD may obtain comparable Services elsewhere and either deduct the costs of obtaining such Services from any amount owed Contractor or Contractor shall reimburse SMSD for such costs incurred by SMSD.

**19. Inspection and Acceptance of Service.** SMSD reserves the right to inspect the Services provided under this Agreement at all reasonable times and places during the Term. If any of the Services do not conform to the requirements set forth in this Agreement, SMSD may (i) require Contactor to perform the Services again in conformity with such requirements, with no additional charge to SMSD; or (ii) equitably reduce payment due Contractor to reflect the reduced value of the Services performed. These remedies do not limit other remedies available to SMSD in this Agreement or otherwise available by law.

**20. Subcontractors.** If SMSD gives written permission for Contractor to subcontract any of the Services, Contractor shall ensure that each subcontractor complies with all provisions of this Agreement. Contractor shall require each subcontractor to maintain and to furnish Contractor with satisfactory evidence of Workers Compensation, Employer’s Liability and such other forms and amounts of insurance which Contractor deems reasonably adequate. Contractor will remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the Services.

**21. Insurance.**  Unless an appropriate SMSD representative agrees to waive the requirements by initialing the designated space near the signature block below, Contractor shall comply with all of SMSD’s insurance requirements. Contractor shall provide Certificates of Insurance evidencing the Insurance Requirements prior to the start of work. Contractor shall maintain insurance coverage in the amounts specified by SMSD. Certificates of Insurance on the current ACORD form shall be issued to SMSD showing all required insurance coverage.

**22. Force Majeure.** The parties to this Agreement may be excused from performance hereunder during the time and to the extent that they are prevented from performance due to an act of God, fire, strike or lockout, when satisfactory evidence thereof is presented to the other party and provided that such non-performance is not due to the fault of the non-performing party.

**23. Notice.** Any notice provided under the terms of this Agreement by either party to the other shall be in writing and may be affected by certified mail, return receipt requested. Notice to either party shall be sufficient if made or addressed as to the address listed in the signature line of this Agreement.

Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified mail, return receipt requested.

**24. Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to its conflicts of laws provisions. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be a court of competent jurisdiction in Fort Bend County, Texas.

**25. No Waiver of SMSD’s Immunity.** The execution of this Agreement and the performance of SMSD of any of its obligations hereunder are not, and are not intended to waive or relinquish, and SMSD shall not waive or relinquish, any governmental, sovereign immunity or defense from or to liability or prosecution available to SMSD, its trustees, officers, employees, or agents under federal or Texas laws.

**26. Entire Agreement.** The Agreement, the procurement solicitation issued by SMSD, RFP # \_\_\_\_\_\_\_\_or Cooperative Contract Name\_\_\_\_\_\_\_\_\_\_\_\_, Contractor’s proposal submitted in response to SMSD’s procurement solicitation, and the attached and incorporated addendum, exhibits, and documents/forms contain the entire agreement of the parties relative to the purpose(s) of the Agreement and supercede any other representations, agreements, arrangements, negotiations, or understanding, oral or written, between the parties to this Agreement. In the event of a conflict between this Agreement and the procurement solicitation issued by SMSD or Contractor’s proposal submitted in response to SMSD’s procurement solicitation, this Agreement shall control. In the event of a conflict between the procurement solicitation issued by SMSD and Contractor’s proposal submitted in response to SMSD’s procurement solicitation, SMSD’s procurement solicitation shall control. This Agreement supersedes any conflicting terms and conditions on any purchase or work orders, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Contractor after the Effective Date of this Agreement.

**27. Severability.** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

**28. Debarment and Suspension.** Pursuant to Executive Orders 12549 and 12689, a contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. When federal funds are expended by SMSD under this Agreement, Contractor certifies that during the term of this Agreement, Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Contractor shall immediately provide written notice to SMSD if at any time Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. SMSD may rely upon Contractor’s certification that Contractor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless SMSD knows the certification is erroneous.

**29. Invoices.** Contractor is required to submit original invoices to the SMSD Business Office ATTN: Accounts Payable. The invoices can be mailed through the postal service to SMSD Business Office ATTN: Accounts Payable, 1625 Staffordshire, Stafford Texas 77477, or emailed to ap@staffordmsd.org

The invoices should include the following:

* 1. Date of invoice
	2. Period of service
	3. List of services provided
	4. Location where services were provided
	5. Invoice number
	6. Contact information
	7. Deliverables under the contract
	8. Certification of service provided through a signature by company representative

Contractor is required to submit to SMSD a completed IRS Form W-9, Criminal History Certification, Felony Conviction Notice, Conflict of Interest Questionnaire, and any other forms required of SMSD before payment is rendered. Payment to Contractor shall be made only after Services are performed and not before. Advance payment to Contractor is strictly prohibited.

Contractor shall submit invoices within a timely manner during SMSD’s fiscal year in which the good(s) and/or services are purchased. In accordance with Texas Government Code § 2251.021, payments are due to Contractor within forty-five (45) days after the later of the following: (1) the date SMSD receives the goods under the Agreement; (2)  the date the performance of the service under the Agreement is completed; or (3)  the date SMSD receives an invoice for the goods or service. Contractor agrees to pay any subcontractors, if any, the appropriate share of the payment received from SMSD not later than the tenth (10th) day after the date Contractor receives the payment from SMSD. The exceptions to payments made by SMSD and/or Contractor listed in Texas Government Code § 2251.002 shall apply to this Agreement.

Failure to send the invoices to the Accounts Payable Office will delay payment. Contractor certifies that no work has been performed before the effective date of this Agreement. Invoices submitted by Contractor for work performed prior to the effective date of the Agreement may not be honored by SMSD, in SMSD’s sole discretion.

**30. Compliance with Applicable Laws.** Contractor agrees to comply with all federal, state, and local laws, rules, regulations, and ordinances, as applicable, including, but not limited to the Education Department General Administrative Regulations (“EDGAR”), 2 C.F.R. Parts 200 and 3474, and 34 C.F.R. Parts 75-77 and 81. If applicable, Contractor certifies compliance with all provisions, laws, acts, regulations, rules, and ordinances as detailed in SMSD’s Certifications form, “Required Contract Provisions for Non-Federal Entity Contracts under Federal Awards – Appendix II to 2 CFR Part 200,” which is incorporated by reference herein. Contractor further certifies compliance with all applicable provisions, laws, acts, regulations, rules, and ordinances, including those referenced in any SMSD vendor packet completed by Contractor, which is incorporated by reference herein.

Contractor hereby certifies that it is not a company identified on the Texas Comptroller’s list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Contractor further certifies and verifies that neither Contractor, nor any affiliate, subsidiary, or parent company of Contractor, if any (the “Contractor Companies”), boycotts Israel, and Contractor agrees that Contractor and Contractor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term “boycott” shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

**31. Confidential Data of SMSD.** In the course of performing duties under this Agreement, Contractor may view, obtain, or have access to financial, accounting, statistical, personnel, and other information of a confidential nature concerning students and school districts being served by SMSD and employees of SMSD. All such information is confidential and shall not be disclosed, directly or indirectly, to any person other than authorized officials of SMSD, either during the Term of this Agreement or after such Term.

Contractor acknowledges that SMSD would be irreparably injured if Contractor were to disclose such information to third parties not entitled to receive such information or to misappropriate such confidential information for Contractor’s own purposes or benefit and that money damages would not compensate SMSD for such irreparable injury.

Contractor further acknowledges that to the extent Contractor receives confidential student information during the performance of duties under this Agreement, Contractor is considered a “school official” in accordance with the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and shall not disclose confidential student information or education records.

**32. Warranties.** All goods and/or services provided by Contractor under this Agreement must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of SMSD’s acceptance of the product and/or service or payment of the applicable invoice. Contractor warrants that all goods and/or services furnished under this Agreement shall conform in all respects to the terms of this Agreement, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the procurement solicitation issued by SMSD. In addition, Contractor warrants that goods and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Contractor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Agreement or the solicitation procurement.

**Insurance Requirements Waiver** – IF the Insurance Requirements are not applicable to the Services or if SMSD otherwise chooses to waive such requirements for purposes of this Agreement, the appropriate SMSD representative may waive the requirements by initialing here: →

Otherwise, Contractor must satisfy the Insurance Requirements specified in this Agreement.

In witness whereof, SMSD and Contractor have executed this Agreement to be effective on the date specified in Term above:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Stafford Municipal School District

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature) (Signature)

 Dr. Robert Bostic.

 Superintendent

 1625 Staffordshire Rd.

 Stafford, Texas 77477

 281-261-9200

**EXHIBIT A**

**SCOPE OF WORK**

|  |  |
| --- | --- |
| Contractor | SMSD |
| * Services/Obligations/Deadlines
 | * Obligations
 |