

**CITY OF GAUTIER
MEMORANDUM**

To: Samantha Abell, City Manager
From: Patty Huffman, Grants and Projects Manager
Through: Chandra Nicholson, Director of Economic Development and Planning
Date: January 15, 2014
Subject: Sub-Grant Agreement with the Mississippi State Department of Health,
Office of Tobacco Control for a Technical Assistance Grant to Educate the Public on
the Benefits of a Smoke-Free Air Policy

REQUEST:

The Economic Development and Planning Department requests City Council authorization to enter into a grant agreement with the Mississippi State Department of Health, Office of Tobacco Control for technical assistance funds to educate the public on the benefits of having a smoke-free air policy in public places.

BACKGROUND:

The Mississippi State Department of Health, Office of Tobacco Control solicits proposals from municipalities that are interested in educating their constituents on the benefits of a comprehensive community smoke-free policy.

DISCUSSION:

The City of Gautier has been awarded a \$5,000 grant from the Mississippi State Department of Health to educate the public on the health consequences of secondhand smoke exposure and the benefits of smoke-free environments through public meetings and forums. Other eligible grant expenses include printing and signage. The City will be reimbursed regardless whether or not a smoke-free ordinance is passed. If the City Council does pass a smoke-free policy, this funding can also be used for toolkits and signage for businesses.

RECOMMENDATION:

The Economic Development and Planning Department staff recommends that City Council enter into a sub-grant agreement with the Mississippi Department of Health as outlined above. City Council may:

1. authorize the sub-grant agreement with the Mississippi Department of Health as presented;
or
2. disapprove the sub-grant agreement with the Mississippi Department of Health.

ATTACHMENT(S):

Mississippi State Department of Health Award Letter
Sub-Grant Agreement



MISSISSIPPI STATE DEPARTMENT OF HEALTH

January 7, 2014

City of Gautier
Gordon T. Gollott, Mayor
3330 Highway 90
Gautier, MS 39553

Dear Mayor Gollott:

Enclosed you will find two original contracts between the Mississippi State Department of Health (MSDH) Office of Tobacco Control (OTC) and the City of Gautier for the amount of \$5,000.00.

Please review the enclosed documents and provide the appropriate signatures in the designated areas of each original. In addition, please complete the required information in Attachment B (page 11). After reviewing and completing this information, please return **both** original contracts to my attention at the Mississippi State Department of Health, Office of Tobacco Control, Post Office Box 1700, Jackson, MS 39215-1700.

Once the contract has completed the routing process at MSDH we will return an original contract to the City of Gautier for your records.

If you have questions regarding the enclosed information, please feel free to contact me at (601) 991-6059. I look forward to working with you this year.

Sincerely,

Kimalesha Brown, MPPA
Special Projects Officer, IV
Office of Tobacco Control

**Mississippi State Department of Health
Sub-Grant Agreement**

I. Contractual Agreement

This document and any other attachments, including but not limited to Attachment A, Terms of Contract, and Attachment B, Conflicts of Interest, are made a part of this document and incorporated herein by reference, and constitute a contract for personal or professional services or goods between the Mississippi State Department of Health (hereinafter referred to as the Department) and the Contractor as indicated below. In the space provided herein, provide a description of the purpose of this contract and/or services to be provided:

The purpose of the contract is to assist municipalities in educating the public on the benefits of implementing comprehensive smoke-free policies and the dangers of second-hand smoke.

II. Contractor's Required Information

Contractor's Name: The City of Gautier

Contractor's Contact Person(s): Gordon T. Gollot, Mayor

I.D. #: _____ DUNS #: _____ Program: Municipal Policies
(SSN or EIN, as shown on attached IRS Form W-9)

Street: 3330 Highway 90 Telephone #: 228-497-8000

City: Gautier State: MS Zip Code: 39553

III. Contract Supplemental Information (Note: If information below is not applicable, fill blank with "N/A")

Title of Contract or Service Provided: N/A

Total Contract Amount: \$5,000.00 Max. Contract Amount per year: \$0.00
(applicable only if contract is multi-year)

Fee or Retainer: \$0.00 Fee or Retainer Payment Basis: 0
(per clinic, hour, day, month, quarter, year, etc.)

Beginning Date: February 1, 2014 Ending Date: June 30, 2014

Org.: 0717 Activity: 1715 Project: 44000TCO

Reporting Category: 034s

Federal Grant: Yes No Stimulus Funds: Yes No

Federal Grant Award #: N/A Federal Aid #: N/A CFDA #: N/A

Occupation: N/A

Specialty: N/A

Program: N/A

Total Personnel Services: \$0.00 Total Travel/Subsistence: \$0.00

Max. Hours Authorized per Month: 0 Assigned Travel Base: N/A

Mileage/Meals Authorized:
None: Meals: _____ Mileage: _____ Lodging: _____

Statewide: Central Office: District (specify): _____

Hours (Daily or weekly, i.e., 8:00a-5:00p, 5 days p/week): N/A

If in a District(s), list all counties (List in decreasing order for amount of time spent in each county):

N/A

Certification/Licensure (Fill in certificate/license number, date of certification/licensure, and type of certification/licensure, as applicable. If a physician, state whether the contractor is board-certified in area of use by Department, non-board certified, or resident.):

N/A

Contractor's Experience/Degrees Earned (Fill in this blank if Contractor is an individual; use additional sheet if necessary):

N/A

Does Contractor currently receive Mississippi State Retirement System benefits? Yes No

Will the Contractor be classified as an "Independent Contractor"? Yes No

ATTACHMENT A: TERMS OF CONTRACT

- I. Contracted Services: The Contractor agrees to provide services related to reduces exposure to second-hand smoke in public places in accordance with the specifications set forth on the preceding page of this contract, titled "Sub-Grant Agreement" and any other documents as set forth by the Department, and are hereby incorporated into and made a part of this contract. No oral statements of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. If other attachments or exhibits exist which are to be incorporated as part of this contract, the title of each document shall be listed here, as follows (use additional sheets, if necessary):

Attachment B – Conflicts of Interest

Attachment C --- Scope of Work

Attachment D -- Letter of Agreement

- II. Ability to Contract: The Contractor warrants that he/she/it is qualified to provide the services, whether personal or professional, as outlined in this contract. The Contractor agrees to conform to existing policies, rules, and regulations of the Department. The Contractor agrees to maintain throughout the contract period such licensing and/or certification as may be required by law for the provision of services specified herein, if applicable. The Contractor warrants that it is a validly organized business with valid authority to enter into this contract; that it is qualified to do business and in good standing in the State of Mississippi; that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual or other contract of any kind; and, notwithstanding any other provision of this contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this contract.

Contractor/Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor/Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

- III. This section applies only to a Contractor which serves as a clinical or healthcare provider for the Department, as follows:
- A. The Contractor authorizes the Department to accept assignment and receive any amounts payable under Part B of Title XVII and Title XIX of the Social Security Act and/or any monies collected for service rendered by the Contractor under the terms of this contract, including but not limited to private insurance, third-party arrangements, or such other payment or reimbursement mechanisms as may be applicable or available. The Contractor agrees that the Department shall be the payor or financial reimbursement mechanism of last resort when other sources are mandated or are available.
- B. The Contractor agrees that no additional charges will be made to patients/clients to whom services are provided under the terms of this contract.
- C. The Contractor's payment records will be submitted to: MS State Department of Health, Office of Tobacco Control
Attention: Kimalesha Brown
805 S. Wheatley St, Suite 400A, Ridgeland, MS 39157
- D. The Department agrees to assure physician supervision as required by law for the services to be provided under the terms of this contract.

- IV. This section applies only to a Contractor who is an individual and presently receives retirement benefits from the Mississippi Public Employees' Retirement System (PERS), as follows:
- A. The Contractor certifies that the forty-five day separation period required by PERS regulations has been met prior to the effective date of this contract.
 - B. The Contractor is responsible for notifying PERS of re-employment and for submission of required documentation to PERS for review and concurrence of the Contractor's status as an independent contractor as required by PERS regulations.
 - C. Contractor's date of retirement from state service:
- V. Financial Records and Audits: The Contractor shall maintain such financial records and other records as may be prescribed by the Department or by applicable Federal and State laws, rules, and regulations. These may be kept according to the Contractor's usual method of recordkeeping, but must be sufficiently detailed to permit an accurate accounting of contract funds and program activities. The contract and the procurement of goods and services shall be governed by the applicable Mississippi statutes and the applicable provisions of the Mississippi Personal Service Contract Review Board Regulations (copies of which are available for inspection at their offices located at 210 East Capitol Street, Suite 800, Jackson, Mississippi). The Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the Department, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.
- VI. Records Retention: The Contractor agrees to submit to the Department quarterly program activity reports thirty (30) days subsequent to the closing of each quarter. The Contractor agrees to submit to the Department quarterly fiscal reports thirty (30) days subsequent to the closing of each quarter, or other applicable period as made a part of this contract and agreed to by both parties. The Contractor agrees to permit reasonable program review and evaluation by the Department; to provide access to any pertinent records; arrange meetings with appropriate personnel; permit inspection of the premises; and to cooperate in any other reasonable requests for fiscal and/or program information. Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the State or any duly authorized representatives shall have unimpeded, immediate access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of this contract for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this contract shall be retained by the Contractor for three (3) years after final payment is made under this contract and all pending matters are closed. However, if any audit, litigation, or other action arising out of or related in any way to this contract is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

Where audits are required to be submitted to the Department before funding can be released, the audits must be submitted within the required timeframe and must be acceptable; if a Contractor fails to submit an audit in a timely manner, or if the audit is unacceptable, the Department reserves the right to cancel or suspend the contract at the Department's discretion.

- VII. Reimbursement: The Department agrees to provide reimbursement for the contract period. For contracts that include the use of Federal funds, the Department agrees to provide reimbursement for the contract period in accordance with the requirements set forth in OMB Circular A-87. Such reimbursement will be made upon receipt of the necessary billing listing salaries, Social Security, retirement, and other items provided in this contract, including copies of payroll requisitions and invoice copies for materials, equipment, or supplies. Any final billings shall be submitted to the Department no later than thirty (30) days after the close of the contract. Failure to submit final billings within the stated timeframe for this contract may be grounds for the Department to reject such reimbursements. It is agreed by both parties that the following items will be made only when approved by both parties:
- A. reimbursement in excess of the amount budgeted for any item; or
 - B. reimbursement of items not included in the budget; or
 - C. the transfer of monies between items within the budget.
- VIII. A. It is agreed by both parties that no reimbursement will be made by the Department until this contract has been signed by the appropriate personnel of both parties and until a budget for expenditures pursuant to the contract has been approved by the Department. Therefore, a Contractor may not begin work or report for duty until then. Additionally, it is expressly understood and agreed that the obligation of the Department to proceed under this contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of State and/or Federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not

forthcoming or insufficient, either through the failure of the Federal government to provide funds, or of the State of Mississippi to appropriate funds, or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the State or the Department, the Department shall have the right, upon ten (10) working days written notice to the Contractor, to terminate this agreement without damage, penalty, cost, or expenses to the State or the Department of any kind whatsoever, pursuant to the termination clause herein. When and if applicable, it is understood that the contract is void and no payment shall be made in the event that the Mississippi Personal Service Contract Review Board does not approve this contract.

- B. The State requires the Contractor to submit invoices electronically throughout the term of the agreement. Vendor invoices shall be submitted to the Mississippi State Department of Health using the processes and procedures identified by the State. Payments by state agencies using the Statewide Automated Accounting System (SAAS), or any specific successor system (MAGIC) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
- IX. Representation Regarding Contingent Fees and Gratuities: The Contractor represents that it has not retained a person to solicit or secure a contract from the Department upon an agreement or understanding for a commission, percentage, brokerage, or contingency, except as was disclosed in the Contractor's bid or proposal, if the selection of the Contractor was done through a bidding or proposal process. The Contractor also represents that it has not violated, is not currently violating, or will not violate the prohibition against gratuities as set forth in §7-204 of the Mississippi Personal Service Contract Procurement Regulations (copies of which are available for inspection at their offices located at 210 East Capitol Street, Suite 800, Jackson, Mississippi).
- X. Salaries and Fringe Benefits: If the contract provides for the payment of salaries and/or fringe benefits (identified as a line item in the contract's budget and/or budget narrative), it is understood by both parties that fringe benefits may be spent only for bona fide retirement programs and employee insurance plans. Before any retirement and/or insurance program is initiated or financed with funds received pursuant to this contract, approval must be obtained from the Department. Insurance plans shall be limited to health, life, unemployment, and workers' compensation. Documentation must be available to the Department of all fringe benefit payments. This clause does not apply where the contract may be used for the payment of salaries and/or fringe benefits, but such were not specifically itemized as budgetary items in the contract.
- XI. This section applies only to contracts for which the Contractor shall serve solely on an Independent Contractor basis, as follows:
- The Contractor, at all times, shall be regarded as an Independent Contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the Department, the Contractor, or any third party as creating the relationship of principal and agent, partners, joint venturers, or any similar such relationship between the Department and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the Department or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the Department and the Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implications, to be employees of the Department. Neither the Contractor nor its employees, under any circumstances, shall be considered servants or agents of the Department; and the Department shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, or agents. The Department shall not withhold from the contract payments to the Contractor any Federal or State unemployment taxes, Federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the Department shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the Department for its employees. Furthermore, none of the work performed under this contract shall be subcontracted without prior approval of the Department. The Department, throughout the life of the contract, shall have the right of reasonable rejection and approval of staff of the Contractor or its Subcontractors assigned to the work by the Contractor. If the Department reasonably rejects staff of the Contractor or its Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to the Department in a timely manner and at no additional cost to the Department. The day-to-day supervision and control of the Contractor's employees and Subcontractors are the sole responsibility of the Contractor.
- XII. This section applies only to contracts that require approval from the Mississippi Personal Service Contract Review Board, as follows:
- A. Order to Stop Work: The Department may, by written order to the Contractor at any time and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this

clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Department shall either:

- i. cancel the stop work order; or
- ii. terminate the work covered by such order as provided in the termination clause of this contract.

B. Cancellation or Expiration of the Order: If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or the contract's price, or both, and the contract shall be modified in writing accordingly, if:

- i. the stop work order results in an increase in the time required to, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- ii. the Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage provided that, if the Department decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

C. Termination of Stopped Work: If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

XIII. The Contractor shall comply with, and all activities under this contract shall be subject to, all applicable Federal, State, and local laws, rules, and regulations, as now exist and as may be amended or modified, including, but not limited to:

- A. The Civil Rights Act of 1964, as amended.
- B. §504 of the Rehabilitation Act of 1973, as amended.
- C. Title IX of the Educational Amendments of 1972, as amended.
- D. The Age Discrimination Act of 1975, as amended.
- E. The Omnibus Budget Reconciliation Act of 1981, as amended.
- F. Americans with Disabilities Act of 1990 (ADA), as amended.
- G. The Drug-Free Workplace Act of 1988, as amended.
- H. Presidential Executive Order No. 12549, Certification Concerning Debarment and Suspension.
- I. The Pro-Children Act of 1994, Part B (Environmental Tobacco Smoke).

XIV. Certification Regarding Lobbying. The undersigned certify, to their best knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
 - D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by §1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- XV. Equal Opportunity: The Contractor understands that the Department is an equal opportunity employer and therefore maintains a policy that prohibits unlawful discrimination on the basis of race, color, creed, sex, age, national origin, physical or mental disability, or any other consideration made unlawful by Federal, State, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the contract that it will strictly adhere to this policy in its employment practices and provision of services.

XVI. Confidential Information

- A. Definition: "Confidential Information" shall mean:
 - i. those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential; and
 - ii. all data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the Department, and any other information designated in writing as confidential by the Department or the State of Mississippi.

Each party to this contract agrees to protect all confidential information provided by one party to the other, to treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or Federal law, and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission, and to do so by using those methods and procedures normally used to protect the party's own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its Subcontractors shall rest with the Contractor. Disclosure of any confidential information by the Contractor or its Subcontractors without the express written approval of the Department shall result in the immediate termination of this contract.

- B. Disclosure: In the event that either party to this contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by State law. This section shall survive the termination or completion of this contract. The parties agree that this section is subject to and superseded by Mississippi Code of 1972, Ann., Section 25-61-I, et. seq. regarding public access to public records.
- C. Exceptions: The Contractor and the Department shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("The Disclosing Party") which:
 - i. is rightfully known to the Contractor prior to negotiations leading to this contract, other than information obtained in confidence under prior engagements;
 - ii. is generally known or easily ascertainable to non-parties of ordinary skill in the business of the Contractor;
 - iii. is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
 - iv. is independently developed by the recipient without any reliance on confidential information;
 - v. is, or later becomes, part of the public domain or may be lawfully obtained by the Department or the Contractor from any non-party; or
 - vi. is disclosed with the Disclosing Party's prior written consent.

- D. Contractor agrees to comply with the Administrative Simplifications provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.

XVII. Non-Discrimination for HIV/AIDS: As a recipient of Federal funds, directly or indirectly through payments from the Department, the Contractor agrees that no person(s) who are otherwise qualified shall be denied employment, funds, education, or care in the program(s) funded in whole or in part by the Department on account of affliction with Acquired Immune Deficiency Syndrome (AIDS)-related conditions, or on the basis of their infection with the Human Immunodeficiency Virus (HIV). This non-discrimination agreement and policy shall likewise apply to those individuals or groups who may be perceived as having AIDS or the aforementioned AIDS-related conditions, or who are perceived as being infected with HIV.

XVIII. Termination:

A. Termination for Convenience:

- i. The Department may, when its interests so require, terminate this contract in whole or in part, for the convenience of the Department. The Department shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.
- ii. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts and any other orders connected with the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Department may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Department. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

B. Termination for Default:

- i. If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Department may notify the Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Department, the Department may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Department may procure similar supplies or services in a manner and upon terms deemed appropriate by the Department. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- ii. Notwithstanding termination of the contract and subject to any directions from the Department, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the State has an interest.
- iii. Payment for completed services delivered and accepted by the Department shall be at the contract price. The Department may withhold from amounts due the Contractor such sums as the Department deems to be necessary to protect the State and the Department against loss because of outstanding liens or claims of former lien holders and to reimburse the Department for the excess costs incurred in procuring similar goods and services.
- iv. Except with respect to defaults of Subcontractors, the Contractor shall not be in default by reasons of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the Department within fifteen (15) days after the cause of the delay and the failure arises out of cause such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; or freight embargoes. If the failure to perform is caused by the failure of a Subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the Subcontractor were reasonably obtainable from other sources in sufficient time to permit

the Contractor to meet the contract requirements. Upon request of the Contractor, the Department shall ascertain the facts and extent of such failure, and if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that but for the terms of the excusable cause, the Contractor's progress and performance would have met the terms of contract, the delivery schedule shall be revised accordingly, subject to the rights of the Department under the clause entitled "Termination for Convenience." As used in this Paragraph of this clause, the term "Subcontractor" means Subcontractor at any tier.

- v. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Department, be the same as if the notice of termination had been issued pursuant to such clause.
 - vi. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
- XIX. **Applicable Law:** This contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the state. The Contractor shall comply with applicable Federal, State, and local laws and regulations.
- XX. **Ownership of Documents and Work Papers:** The Department shall own all documents, files, reports, work papers, and working documentation, electronic or otherwise, created under this contract, except for the Contractor's internal administrative and quality assurance files and internal correspondence. The Contractor shall deliver such documents and work papers to the Department upon termination or completion of the contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from the Department and subject to any copyright protections. By entering into this contract, the Contractor conveys, sells, assigns, and transfers to the Department all rights, titles, and interest it may now have or hereafter acquire under the antitrust laws of the United States and the State of Mississippi that relate to the particular goods or services purchased or acquired by the Department under this contract.
- XXI. **Attorneys' Fees and Expenses:** Subject to other terms and conditions of this contract, in the event the Contractor defaults in any obligations under this contract, the Contractor shall pay to the Department all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the Department in enforcing this contract or otherwise reasonably related thereto. The Contractor agrees that under no circumstances shall the Department or the State of Mississippi be obligated to pay any attorneys' fees or costs of legal action to the Contractor. This clause shall not apply to any contracts entered into with another state agency, board, or commission.
- XXII. **Modifications and Changes in Scope of Work:** All modifications to the contract must be made in writing and signed by both parties to the contract. The Department may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the contract or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the Department and the Contractor. If the Contractor believes that any particular work is not within the scope of the contract, is a material change, or will otherwise require more compensation to the Contractor, the contractor must immediately notify the Department in writing of this belief. If the Department believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.
- XXIII. **Failure to Deliver:** In the event of failure of the Contractor to deliver goods or services in accordance with the contract terms and conditions, the Department, after due written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Department may have.
- XXIV. **Force Majeure:** Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its Subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the Department immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically

extend such dates for a period equal to the duration of the delay caused by such events, unless the Department determines it to be in its best interest to terminate the contract.

- XXV. **Indemnification:** To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi, the Department, members of the Mississippi State Board of Health, and its officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this contract. In the State of Mississippi's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim or suit, the Contractor shall use legal counsel acceptable to the State of Mississippi and to the Department; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State of Mississippi and the Department shall be entitled to participate in said defense. The Contractor shall not settle any claim or suit without the State of Mississippi and the Department's concurrence, which the State of Mississippi and the Department shall not unreasonably withhold.
- XXVI. **No Limitation of Liability:** Nothing in this Contract shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for the damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.
- XXVII. **Recovery of Money:** Whenever, under this contract, any sum of money shall be recoverable from or payable by the Contractor to the Department, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the Department. The rights of the Department are in addition and without prejudice to any other right the Department may have to claim the amount of any loss or damage suffered by the Department on account of the acts or omissions of the Contractor.
- XXVIII. **Severability:** If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the contract that can be given effect without the invalid or unenforceable provision, and to this end, the provisions hereof are severable. In such event, the parties shall amend the contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
- XXIX. **State Property:** The Contractor will be responsible for the proper custody and care of any State-owned or State-leased property furnished for the Contractor's use in connection with the performance of this contract. The Contractor will reimburse the Department for any loss or damage, normal wear and tear excepted.
- XXX. **Third Party Action Notification:** The Contractor shall give the Department prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this contract.
- XXXI. **Unsatisfactory Work:** If, at any time during the contract term, the service performed or work done by the Contractor is considered by the Department to create a condition that threatens the health, safety, or welfare of the general public, the Department, its property, or its employees, or for whom the contracted services are to be rendered, the Contractor shall, on being notified by the Department, immediately correct the deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the Department shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.
- XXXII. **Waiver:** No delay or omission by either party to this contract in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this contract will void, waive, or change any other term or condition. No waiver by one party to this contract of a default by the other party will imply, be construed as, or require waiver of future or other defaults. Failure by the Department at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Department to enforce any provision at any time in accordance with its terms.
- XXXIII. **Anti-Assignment/Subcontracting:** The Contractor acknowledges that it was selected by the Department to perform the services required hereunder based, in part, upon the Contractor's skills and expertise. The Contractor shall not assign, subcontract, or otherwise transfer this contract in whole or in part without the prior written consent of the Department, which the Department may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer by the Contractor of its obligations without such consent shall be null and void. No such approval by the Department of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the Department in addition to the total contractual price agreed upon in this contract. Subcontracts shall be subject to the terms and conditions of this contract

ATTACHMENT B: CONFLICTS OF INTEREST

1. List the names of Members of the Board of Directors or other Governing Body:

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2. Are any Members of the Governing Body or Project Staff also MSDH employees?

Check one, only: YES NO

3. If Yes, please list the name of the MSDH employee(s) and the position held within the MSDH.

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4. Are any Members of the Governing Body or Project Staff also Spouses, Parents, or Children of MSDH Employees?

Check one, only: YES NO

5. If Yes, List the Name and Relationship to the MSDH employee:

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6. List all other current contracts with MSDH (include \$ amount and contract beginning & ending dates):

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7. Contractor's Signature:

Signature

Date



ATTACHMENT C: ADDITIONAL CONTRACTUAL TERMS

Schedule an initial meeting with the local MS Tobacco-Free Project (MTFC) Director and/or the Office of Tobacco Control to discuss contractual obligations by February 1, 2014.

Review the model policy provided by the Americans for Non-Smokers' Rights (ANR). For any changes to the content of the policy, seek technical assistance from statewide partners such as the American Lung Association, American Heart Association, American Cancer Society, and Partnership for a Healthy MS by February 1, 2014.

Schedule a date for the public comments meeting and prepare an agenda by March 1, 2014.

Collaborate with the local MTFC to educate the community on the health consequences of secondhand smoke exposure (ex. Public forum). Inform the community that a comprehensive smoke-free policy is being considered and invite public comments by April 1, 2014.

Upon completion of activities, the City of Gautier must request payment of \$5000.00 to the Office of Tobacco Control. The following documents should be submitted to the request for payment:

1. Completed, updated project time line
2. Letter of Agreement between the municipality and the MS Tobacco-Free Coalition
3. Documentation of request to change the model policy (If applicable)
4. Documentation of how the public comments meeting was announced (ex: newspaper article)
5. Minutes and agenda from public comments meeting
6. A signed copy of the comprehensive smoke-free policy (The model policy provided by OTC must be used)
7. List of names and addresses of businesses to which the Business Toolkits were mailed
8. Documentation/receipts of any other expenses incurred

Letter of Agreement between the municipality of Gautier, MS and the Mississippi Tobacco-Free Coalition of Jackson County

This Letter of Agreement verifies that the municipality of Gautier will work collaboratively with the Mississippi Tobacco-Free coalition of Jackson County during education and implementation phase of the Community Smoke-Free Policy Program. The Grantee and the MTFC must agree on the timeline prior to signing this Letter of Agreement.

Grantee Activities:

1. Schedule an initial meeting with local MTFC project director and OTC to discuss contractual obligations.
2. Review the model policy provided by OTC and, if applicable, submit a written request to the MTFC project director for approval to change the policy.
3. Advertise to community residents that a smoke-free policy is being considered and invite public comments.
4. Schedule a date for the public comments meeting and prepare an agenda.
5. Business toolkits must be mailed to the city/town's business owners.

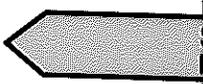
MTFC Responsibilities

1. Provide technical assistance to the municipality.
2. Provide education and resources.
3. Facilitate communication between the municipality and MSDH.

The undersigned, as authorized representatives of the respective parties, agree to all terms provisions of the agreement.

Name/Title of city official Date

Name of MTFC Project Director Date



Request for Taxpayer Identification Number and Certification

Give form to the
 requester. Do not
 send to the IRS.

Print or type
 See Specific Instructions on page 2.

Name (as shown on your income tax return)	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
: :
: :
or
Employer identification number
: :

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here

Signature of
 U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

STATE OF MISSISSIPPI
Minority Vendor Self Certification Form

Please complete the following information on this form and return immediately to the Mississippi Department of Finance and Administration, Attention: Vendor File Maintenance, P.O. Box 1060, Jackson, Mississippi 39215. Forms may also be faxed to (601) 359-5525.

Name of Business: _____
Address: _____ Post Office Box: _____
City: _____ State: _____ Zip: _____
Telephone #: _____ Tax I.D.: _____
SAAS Vendor #s (if known): _____

MINORITY STATUS

As used in this provision, means a business concern that (1) is at least 51% minority-owned by one or more individuals, or minority business enterprises that are both socially and economically disadvantaged and (2) have its management and daily business controlled by one or more such individuals as ascribed under the Minority Business Enterprise Act 57 -- 69 and the Small Business Act 15 USCS, Section 637(a). See back of form for more information. Should you require additional information regarding your Minority Status, or need assistance in completing this form please call the Mississippi Development Authority, Minority Business Enterprise Division at 601-359-3448.

APPLICABLE NOT APPLICABLE

IF MINORITY STATUS IS APPLICABLE, PLEASE CHECK APPROPRIATE CODE BELOW:

Minority Business Enterprise

- A (Asian Indian)
- B (Asian Pacific)
- C (Black American)
- D (Hispanic American)
- E (Native American)

Women Business Enterprise

- M (Asian Indian)
- N (Asian Pacific)
- O (Black American)
- P (Hispanic American)
- Q (Native American)
- R (Other) Non Ethnic Women

The undersigned certifies under the penalties (administrative suspension and/or ineligibility for participation) set forth in the Minority Business Enterprise Act 57- 69, and the Small Business Act 15 USCS, Section 637 (a), that the company classification and selected information above is true and correct. The undersigned will advise of any change in such classification at once.

Business: _____ Certified by: _____
Date: _____ Title: _____ Name Printed: _____

