

2004 - 2005 CONTRACT

STUDY OF THE SOCIOECONOMIC IMPACT OF GAMBLING ON IOWANS

I. PARTIES

The parties to this contract are the Studies Committee of the Legislative Council, herein referred to as the "Studies Committee," and Per Mar Security Services, herein referred to as "Consultant," a business located in Davenport, Iowa, and identified with the Federal Employer Identification Number 42-0818682.

II. GENERAL CONTRACT TERMS AND CONDITIONS

A. Request for Proposals and Consultant's Proposal. The "Request for Proposals for a Study of the Socioeconomic Impact of Gambling on Iowans," as approved by the Studies Committee, herein referred to as the "RFP" and the Consultant's proposal, "2004-2005 Proposal to Study the Socioeconomic Impact of Gambling in Iowa," to the extent not otherwise rejected by the Studies Committee, are by this reference made a part of this contract. If a term or provision in this contract conflicts with a term or provision in the RFP or the Consultant's proposal, the term or provision in this contract shall control.

B. Services Provided. The Consultant shall provide and perform the services specified in the RFP in the manner required by the RFP. This requires compliance with all the provisions of the RFP labeled Study Overview, Study Specifics, Study Timetable – Schedule of Events, and Final Progress and Report Requirements.



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III. ADDITIONAL GENERAL CONTRACT TERMS AND CONDITIONS

A. *Choice of Law and Forum.* This contract is governed by the laws of the State of Iowa. All disputes and controversies regarding this contract shall be heard in the District Court of Polk County, Iowa.

B. *Compliance With Applicable Laws and Regulations.* During the duration of this contract and as a condition of the Consultant's duty to perform under the provisions of this contract, the Consultant shall comply with all applicable laws and regulations of the State of Iowa and the United States, including, but not limited to, Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991 (42 U.S.C. ch. 21), and the federal Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651--678).

C. *Materials Produced, Findings and Reports, and Peer Review.* The Consultant shall comply with the restrictions and requirements contained in the RFP regarding Rights to Material Produced, Release and Acceptance of Findings and Reports, and Peer Review Advisory Committee.

D. *Subcontracting.* The Consultant shall not provide for subcontracting, unless the Studies Committee approves the subcontractor and the terms and conditions of the subcontracting agreement as provided by the Studies Committee.

E. *No Pecuniary Gain or Conflict of Interest.* The Consultant agrees that to its knowledge, neither the staff of the Studies Committee nor a member of the General Assembly of the State of Iowa has or will receive any direct economic benefit because of the selection of the Consultant as a party to this contract. The Consultant agrees that it has no interest and will not acquire any direct or indirect interest which would conflict in any manner with the performance of this contract, and that a person having such an interest will not knowingly be associated in the performance of this contract.

F. *Assignment or Transfer.* The Consultant shall not assign or transfer any interest in this contract to another person without the prior written consent of the Studies Committee.

IV. PAYMENT OBLIGATIONS

A. *Fixed Price.* The total payment for services to the Consultant by the Studies Committee under this contract shall not exceed \$90,000. The Studies Committee shall pay the fixed contract price to the Consultant of \$88,000 for the completion of the Study



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of the Socioeconomic Impact of Gambling on Iowans as provided in this contract. The payment schedule shall be as provided in paragraph "B". Payment shall be due within twenty days of the date provided for in the payment schedule.

B. Payment Schedule. The following payment schedule shall govern this contract. Dates as specified in this payment schedule may be modified upon mutual agreement of the Consultant and the Studies Committee:

1. **First Payment.** Five percent (5%) of the fixed contract price due (\$4,400) shall be paid following execution of this contract by the Studies Committee.
2. **Second Payment.** Ten percent (10%) of the fixed contract price due (\$8,800) shall be paid following submission of an initial written progress report due from the Consultant on October 13, 2004.
3. **Third Payment.** Twenty percent (20%) of the fixed contract price due (\$17,600) shall be paid following an in-person progress report meeting of the Consultant and the Studies Committee on December 6, 2004.
4. **Fourth Payment.** Ten percent (10%) of the fixed contract price due (\$8,800) shall be paid following submission of the second written progress report due from the Consultant on January 20, 2005.
5. **Fifth Payment.** Fifteen percent (15%) of the fixed contract price due (\$13,200) shall be paid following an in-person presentation to the Studies Committee with submission of the draft of the final report on February 25, 2005.
6. **Sixth Payment.** Fifteen percent (15%) of the fixed contract price due (\$13,200) shall be paid following submission of the preliminary final report to the Studies Committee for review by the peer review advisory committee on March 18, 2005.
7. **Seventh Payment.** Fifteen percent (15%) of the fixed contract price due (\$13,200) shall be paid following submission of the final report to the Studies Committee following peer review advisory committee review and comment, on a date agreed upon by the Consultant and the Studies Committee but in no event later than July 1, 2005.
8. **Eighth Payment.** Ten percent (10%) of the fixed contract price due (\$8,800) shall be paid following an in-person presentation to the Studies Committee following submission of the final report on a date agreed upon by the Consultant and the Studies Committee.

V. COMPLIANCE, TERMINATION, AND REMEDIES

A. General. Remedies available as provided in this contract are in addition to every other remedy available at law or in equity.



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B. Indemnification. Except as provided in this contract, the Consultant shall jointly and severally indemnify and hold the Studies Committee, the Legislative Council, the Iowa General Assembly, and the State of Iowa harmless from and against all liability, loss, damage, or expense, including reasonable attorney fees, by reason of a breach of contract by the Consultant.

C. Justifiable Termination. Any of the following shall be just cause for terminating this contract, without breach of contract:

1. Insufficient Moneys. If moneys necessary to satisfy the contract price are at any time not forthcoming or insufficient through the failure of the State of Iowa to make sufficient moneys available as a result of legally binding action, then the Studies Committee may terminate this contract by giving not less than 20 calendar days' written notice to the Consultant documenting the lack of funding. Upon termination, the Studies Committee agrees to pay all costs incurred by the Consultant up and until the date of termination. If moneys necessary to satisfy the contract price become available within 40 calendar days subsequent to the termination under this contract, the Studies Committee agrees to reexecute a contract with the Consultant under the same provisions of this contract and any amendments as agreed to by the Studies Committee and the Consultant.

2. Force Majeure. If the performance of any provision of this contract is prevented by an act of God, such as civil tumult, war, epidemic, interruption of transportation or communication, or any other cause beyond the control of a party, as determined by the Studies Committee, that party is relieved of the performance of that provision of this contract. However, if the Consultant is prevented from performance, the Consultant shall provide the Studies Committee with written notice within 10 calendar days specifying the delayed event, the cause of the delay, its possible duration, the Consultant's efforts to remedy the situation, and the expected effect of the delay upon the schedule contained in this contract. It shall be the Consultant's responsibility to show that the cause of the delay was beyond the Consultant's control and that the Consultant was not reasonably able to anticipate the event in order to avoid the delay.

D. Nonjustifiable Termination. Either party may terminate this contract if the other party breaches this contract by failing to substantially comply with a provision of this contract. The party terminating this contract shall deliver written notice to the other party at least 20 calendar days following the breach. The written notice shall document the breach of contract. If the Consultant breaches this contract by failing to satisfy such provision, the Studies Committee may withhold all or a portion of unexpended moneys of the contract price, retaining such moneys as liquidated damages. The Studies Committee may also continue this contract, and retain such moneys as liquidated



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damages. The Studies Committee shall deliver notice to the Consultant in writing of its decision to retain an amount of liquidated damages not later than 20 calendar days following the breach of contract.

E. Liquidated Damages – Delay in Delivery. The Studies Committee may demand liquidated damages for a delay in delivery of the draft final report, due February 25, 2005, the preliminary final report, due March 18, 2005, and the final report, due on a date agreed upon by the Consultant and the Studies Committee but in no event later than July 1, 2005, as required in this contract. The Studies Committee shall notify the Consultant that the Consultant is subject to liquidated damages as provided in this Paragraph "E". The Studies Committee shall have the right to assess an amount in liquidated damages which shall be subtracted from the contract price for a delay in the delivery of the draft final report, the preliminary final report, and the final report as required in this contract. The following shall apply:

1. Draft Final Report. For a delay in the delivery of the draft final report, the amount of liquidated damages shall be based on the assumption that each calendar day of such delay will cause harm to the goal of completing the study in a timely fashion. The amount of liquidated damages shall equal \$250 for each business day of delay.

2. Preliminary Final Report. For a delay in the delivery of the preliminary final report, the amount of liquidated damages shall be based on the assumption that each calendar day of such delay will cause harm to the goal of completing the study in a timely fashion due to the delay in submitting the preliminary final report to the peer review advisory committee for its review and comment. The amount of liquidated damages shall equal \$300 for each business day of delay.

3. Final Report. For a delay in the delivery of the final report, the amount of liquidated damages shall be based on the assumption that each calendar day of such delay will cause irreparable damage to the reputation of the Studies Committee and the General Assembly for failing to complete the study in an expeditious and timely manner as required by the legislation requiring the study. The amount of liquidated damages shall equal \$400 for each calendar day of delay.

VI. WAIVERS AND AMENDMENTS

A. Writing Requirement. A waiver or amendment of a provision of this contract shall not be valid unless in writing.



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B. Waiver Restriction. No person representing the Studies Committee may waive a requirement or amend this contract, except upon the specific authorization of the Studies Committee.

C. Failure to Act Is Not a Waiver. The failure of a party at any time to enforce a provision of this contract is not a waiver of the provision, and does not affect the validity of any provision of this contract or the right of either party to subsequently enforce a provision of this contract. A decision by the Studies Committee to ignore a breach of this contract is not a waiver of a subsequent breach of this contract.

VII. COMMUNICATION

A. Studies Committee Contacts. All communications to the Studies Committee regarding this contract must be addressed to Mr. Ed Cook:

Mr. Ed Cook
Senior Legal Counsel
Legislative Services Agency
State Capitol
Des Moines, Iowa 50319
Telephone: (515) 281-3994
Fax: (515) 281-8027
E-mail: ed.cook@legis.state.ia.us

Mr. Cook may designate alternate persons to receive communications for any issue that arises under this contract.

B. Consultant Contacts. All communications to the Consultant regarding the study shall be made to Mr. Don Smith:

Mr. Don Smith
Senior Investigator
Per Mar Security Services
5424 Tremont Avenue
P O Box 4227
Davenport, IA 52808
Telephone: (563) 344-4250
FAX: (563) 359-5612
E-mail: dsmith@permarsecurity.com



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VIII. EXECUTION AND EFFECT OF EXECUTION

A. Integration. This contract contains the entire agreement between the Studies Committee and the Consultant, and representations made before the signing of this contract shall not be binding, and neither party shall rely upon conflicting prior representations in entering into this contract.

B. Effective and Termination Dates. This contract takes effect upon being signed by authorized representatives of the Studies Committee and the Consultant and continues until the provisions of this contract are satisfactorily performed, or until this contract is otherwise terminated under its provisions.

C. Signatures. The duly recognized representatives of the Studies Committee and the Consultant have on the date noted signed their names to and executed this contract:

Stewart Iverson, Jr.
Senator Stewart Iverson, Jr.
Chairperson, Studies Committee

9-15-04
Date

Don Smith
Mr. Don Smith
Per Mar Security Services

9-28-04
Date

[Signature] 9/28/04
Per Mar Security Services

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Des Moines, Iowa 50319
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