

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF**

**FROM: SEAN COSTELLO
DEPUTY ATTORNEY GENERAL**

DATE: SEPTEMBER 30, 2016

SUBJECT: THE TRS ADMINISTRATOR'S CONTRACT

The existing contract between the Commission and its Telecommunications Relay Services (TRS) Administrator, Bob Dunbar, expires on October 17, 2016. *Idaho Code* § 61-1303(1) states that the Commission "shall contract with a qualified person to administer" the TRS program. The TRS program allows citizens who are hearing or speech-impaired to engage in telephone communications "in a manner functionally equivalent to that of individuals without hearing or speech impairments." *Idaho Code* § 61-1301.

BACKGROUND

Pursuant to the TRS Act, the Commission has contracted with Mr. Dunbar to administer the TRS program since its inception in 1993. Under the general terms of the TRS contract, Mr. Dunbar performs the duties of the TRS Administrator including, but not limited to: filing annual and quarterly TRS reports; meeting with stakeholders; contracting with a service provider to actually perform the relay services; issuing RFPs for relay services; evaluating relay bids in response to RFPs; and performing other duties as required by the Commission.

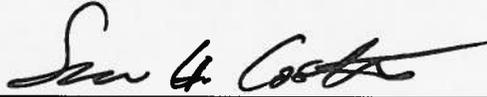
Under the current contract, the Administrator is compensated at a rate of \$60.00 per hour. The Administrator's compensation is not to exceed a total amount of \$39,000 in any given year without the express written permission of the Commission. Contract § 4.1. The contract also provides that the TRS fund must be audited by a neutral third-party at least once every three years or upon termination of the contract. *Id.* at § 2.7. Either party may terminate the contract by giving 90 days' notice. *Id.* at § 4.4.

STAFF RECOMMENDATION

Staff believes that Mr. Dunbar has admirably performed his duties as TRS Administrator. He has been the TRS Administrator since 1993, and has efficiently discharged his duties during his tenure. Although the current contract allows the parties to extend the contract by two one-year extensions (§ 4.3), Staff recommends that the Commission enter into a new contract for another three-year period to expire October 17, 2019.

COMMISSION DECISION

Does the Commission wish to contract with Mr. Dunbar as the TRS Administrator for a three-year period starting October 17, 2016, pursuant to *Idaho Code* § 61-1303(1)(a)?



Sean Costello
Deputy Attorney General

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CONTRACT FOR TRS ADMINISTRATOR

1. Identification of Parties and Purpose of Contract

1.1 Parties. This contract is entered into by and between the IDAHO PUBLIC UTILITIES COMMISSION (Commission) whose principal office is located at 472 West Washington Street, PO Box 83720, Boise, Idaho 83720-0074, (208) 334-0300, and Robert D. Dunbar (the TRS Administrator), with offices 2545 N. Waggle Place, Meridian, ID 83646, (208) 846-8371.

1.2 Statutory Authority. *Idaho Code* §§ 61-1301 *et seq.* requires the establishment and operation of a State telecommunications relay services (TRS) program to provide telecommunications relay services to hearing-impaired and speech-impaired persons. This program will be carried out through a TRS Administrator and a TRS provider. *Idaho Code* § 61-1303(1)(a) provides that the Commission shall contract with a qualified person to administer the program (the TRS Administrator).

2. Responsibilities of the TRS Administrator

2.1 General Obligations. The TRS Administrator's obligations under this contract are to be responsible for administration, collection and distribution of monies for the Telecommunications Relay Services Fund (TRS Fund); provide the necessary liaison among the TRS provider and its representatives; administer the bidding process for the TRS provider; and perform other duties as may from time to time arise in the administration of this program and the TRS fund.

2.2 Incorporation by Reference. The TRS Administrator shall fulfill the duties and obligations imposed by *Idaho Code* §§ 61-1301 *et seq.*; the Commission's TRS Rules (IDAPA 31.46.02.000 *et seq.*); orders of the Commission, and this contract. The legal requirements of all such statutes, rules and orders, as currently in effect or amended in the future, are incorporated by reference into this contract.

2.3 Availability of TRS Administrator. The TRS Administrator shall meet with the Telephone Industry Advisory Committee (or its representatives) appointed by the Commission, the Idaho State Council for the Deaf and Hard of Hearing (or its representatives), the Idaho State Council on Developmental Disabilities (or its representatives), and with the Commission Staff and the Commissioners as necessary to perform the Administrator's duties under this contract.

2.4 Confidential Information. Some data provided for the TRS Administrator's use may be deemed confidential by entities from which or about which the information has been provided. When information claimed to be confidential has been provided to the TRS Administrator, he will not disclose the information received from any entity to any person (other than the Commission, its Staff or consultants hired by the TRS Administrator) without the prior written consent of the provider of the information or the entities about which the information has been provided.

2.5 Specific Duties. The TRS Administrator shall:

a. Establish a dual signature checking account, with the other signer to be designated by the Commission, for receipt and distribution of funds paid into and out of the TRS fund, respectively. The dual signatures shall be used in lieu of a bond. The bonding requirement for the administrator is set at zero so long as the dual signature checking account is continued in use (*Idaho Code* § 61-1303(1)(b)(ii));

b. Timely pay all ordinary and necessary expenses of the TRS Administrator under this contract;

c. Enter into and/or administer a contract with the provider of the TRS program, which contract and provider have been approved by the Commission (*Idaho Code* § 61-1303(1)(b)(vi));

d. Hire necessary sign language interpreters when meeting with members of the hearing-impaired and speech-impaired communities;

e. Conduct meetings with the Telephone Industry Advisory Committee (or its representatives) appointed by the Commission, the Idaho State Council for the Deaf and Hard of Hearing (or its representatives) as necessary to discuss the TRS program and the TRS fund and matters of interest related to TRS (*Idaho Code* § 61-1303(1)(b)(i) and (vii)); and

f. Perform other services concerning the TRS program as found reasonable or necessary by the Commission in the course of this contract, including offering appropriate advice and recommendations to the Commission.

2.6 Office Expenses. In addition to the Administrator's hourly fee (as approved by the Commission), the TRS Administrator may charge the TRS fund for the cost of reasonable and ordinary office expenses, including secretarial, clerical, telephone, mailing and copying costs, and

may call upon the Commission to provide secretarial, clerical, telephone, mailing and copying services without charge.

2.7 Outside Third Party Audit. The Administrator shall contract with a neutral third party to audit the TRS Fund at least once every three (3) years, or upon termination of this contract.

3. Responsibilities of the Commission

3.1 Commission Assistance. The Commission may provide the TRS Administrator with secretarial, clerical, telephone, mailing and copying assistance upon written request by the Administrator. The Commission may provide the Administrator advice and other technical assistance concerning the legal requirements of the TRS program, and will be generally available to assist the TRS Administrator in the performance of the Administrator's duties. Any assistance provided the Administrator by the Commission shall be strictly voluntary and will not relieve the Administrator of the Administrator's obligations to perform the services as an independent contractor.

4. Compensation – Term of Contract

4.1 The TRS Administrator's Compensation. The TRS Administrator shall be compensated for duties performed in the administration of the TRS fund at sixty dollars (\$60) per hour. The Administrator's compensation shall not exceed a total annual amount of thirty-nine thousand dollars (\$39,000) without the expressed written permission of the Commission.

4.2 Additional Compensable Expenses. The TRS Administrator is authorized to incur expenses for sign language interpreters, for legal services, for necessary travel and other reasonable expenses of administration of the TRS fund including, but not limited to, reasonable office expenses and the costs of insuring the TRS Administrator against liability for errors or omissions arising out of the performance of his duties as administrator. Travel expenses shall be billed at the mileage, lodging and per diem rates not to exceed those amounts authorized for claims by State employees. Expenses authorized by this paragraph shall be submitted once monthly to the Commission for approval before reimbursement from the TRS Fund. The TRS Administrator shall maintain vouchers supporting the amount of reimbursement received. The Commission may inspect these vouchers at any time. Upon approval, expenses submitted by the first of the month shall be paid by the fifteenth of the month.

4.3 Term of the Contract. This contract shall be effective from October 17, 2016, upon the signatures of the Commission President and the TRS Administrator. This contract shall

continue in effect until terminated by either party or until October 17, 2019. The Parties may extend this contract from its October 2019 termination by two (2) one-year extensions, pursuant to Section 5.2. The TRS Administrator shall be due any unpaid compensation and/or expenses under this Section 4 of the contract for duties performed pursuant to this contract up to the time of termination.

4.4 Termination.

a. Mutual Termination. This contract may be terminated by mutual consent of both parties, or by either party by giving ninety (90) calendar days' notice, in writing and delivered by certified mail or in person to the other party.

b. Termination by Commission. Commission may terminate this contract if:

1. TRS Administrator fails to provide services or perform the work called for by this contract within the time specified or any extension thereof, or
2. TRS Administrator fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from the Commission, fails to correct such failures within a reasonable period as the Commission may authorize.

c. TRS Administrator's Obligation Upon Termination. Upon termination of this contract, the TRS Administrator shall provide the Commission with a final accounting of funds received and expenses incurred up to and including the date of termination. The TRS Administrator shall submit to the Commission all records, contracts, bids, spreadsheets, accounts and other documents created or received by the Administrator in the performance of his TRS duties.

5. Miscellaneous Provisions

5.1 No Assignment of Contract. This contract shall not be assigned by either party without the prior written consent of the other party.

5.2 Amendment to Contract. Any changes to this contract must be in writing and signed by the Commission and the Administrator.

5.3 Best Efforts – Hold Harmless. The TRS Administrator's work will be on a best effort basis. The TRS Administrator trusts the results will meet the objectives sought. The TRS Administrator's liability to the Commission, if any, for any damages direct or consequential

resulting from breach of this contract will be limited to the amount paid the TRS Administrator under this contract provided. The TRS Administrator shall indemnify, defend and save harmless the State of Idaho, its officers, agents and employees from and against any and all liability, claims, damages, losses, expenses, actions, attorneys' fees and suits whatsoever caused by or arising out of Vendor's negligent or wrongful performance, acts or omissions under this contract or failure to comply with any state or federal statute, law, regulation or rule. Nothing contains in this contract shall be deemed to constitute a waiver of the State of Idaho's sovereign immunity, which immunity is hereby expressly reserved.

5.4 Not an Employment Contract. This contract is not an employment contract. The TRS Administrator at all times remains an independent contractor, and this contract does not create an employee/employer relationship. *Idaho Code* § 61-1303(1)(a). The TRS Administrator shall be responsible for paying all employment-related taxes and benefits, such as federal, state and local income tax withholding, social security contributions, and employment insurance premiums, health and life insurance premiums, pension contributions, and similar items.

5.5 Worker's Compensation. Before this contract takes effect, the TRS Administrator must submit evidence of worker's compensation insurance coverage or provide a statement that he is the owner of a sole proprietorship, a working member of a partnership, or an officer of a corporation owning more than 10% of the issued and outstanding voting stock of the corporation. See *Idaho Code* § 72-212. A certificate of proof of coverage from the TRS Administrator's insurance carrier will satisfy the requirement of submission of proof of worker's compensation coverage.

5.6 Compliance with Law. In performing this contract, the TRS Administrator shall comply with all applicable laws, rules and determinations of government agencies.

5.7 Tax ID. The TRS Administrator's tax identification number is 495-52-5776.

5.8 Contact and Notice.

a. All contact and direction, relating to this contract shall be with Grace Seaman and reports and other work performed under this contract shall be forwarded to the Commission Secretary at the address set out below.

b. Notice to either party shall be made in writing and delivered by first class mail, postage prepaid, by personal delivery or facsimile copy at the following address:

TRS Administrator

Robert D. Dunbar
2545 N. Waggle Place
Meridian, ID 83642

Commission

Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

5.9 Waiver. The failure of the Commission to enforce any provision of this contract shall not constitute a waiver by the Commission of that or any other provision.

5.10 Governing Law. Both parties agree that this contract shall be governed by and construed in accordance with the laws of the state of Idaho. Parties hereby consent to the jurisdiction of the courts of Ada County in the State of Idaho in the event of any dispute with respect to this contract.

5.11. Entire Agreement. The contract constitutes the entire agreement between the parties. This contract supersedes all prior agreements or understandings between the Administrator and the Commission.

5.12. Execution in Counterparts. This contract may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same contract.

5.13. Mediation. Should any dispute arise between the parties to this contract, it is agreed that the dispute will be submitted to a mediator, agreed to and compensated equally by both parties, prior to commencement of any litigation. Mediation will be conducted in Boise, Idaho. Both parties agree to exercise their best efforts in good faith to resolve all disputes in mediation.

5.14. Attorneys' Fees. In the event a legal proceeding of any kind is instituted under this contract or to obtain performance of any kind under this contract, the prevailing party shall be awarded such additional sums as the court may adjudge for reasonable attorneys' fees and to pay all costs and disbursements incurred in such proceeding.

5.15. Fiscal Necessity and Non-Appropriation. The Commission is a governmental entity the Legislature of the State of Idaho is under no legal obligation to make appropriations to fulfill this contract. This contract shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. The State reserves the right to terminate this contract in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the

State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required to continue such payments, or requires any return or "give-back" of funds required to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if the State discontinues or makes a material alteration of the program under which funds were provided. The State shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable. All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the Contractor. Further, in the event of non-appropriation, the State shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom.

5.11. Severability. The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

The parties by the signature below of their authorized representatives, hereby acknowledge that they have read this contract, understand it and agree to be bound by its terms and conditions.

DATED at Boise, Idaho, this day of September 2016.

IDAHO PUBLIC UTILITIES COMMISSION

By:

PAUL KJELLANDER, PRESIDENT

TRS ADMINISTRATOR

By:

ROBERT D. DUNBAR

Reviewed and Approved:

Joe Leckie: _____

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Pursuant to Paragraph 5.5 (Worker's Compensation) of the contract, I certify that:
I am a sole proprietor contracting with the Idaho Public Utilities Commission and I am therefore
exempt from provisions of the worker's compensation law. See *Idaho Code* § 72-212.

ROBERT D. DUNBAR

DATE