

**MOTORCYCLE SAFETY UNIT
MOTORCYCLE OPERATOR TRAINING PROGRAM
FY 16-17 PRIVATE ENTITY CONTRACT**

THE STATE OF TEXAS

COUNTY OF TRAVIS

CONTRACT NUMBER:

THIS CONTRACT is entered into and between the Texas Department of Public Safety, hereinafter referred to as the Department, and the privately owned and operated training entity, hereinafter referred to as the Contractor, pursuant to the authority granted by Section 662.005, Texas Transportation Code.

I. CONTRACTING PARTIES:

Department: Texas Department of Public Safety

Contractor:

II. STATEMENT OF PROGRAM GOAL: The goal of this program is to provide basic and advanced motorcycle operator training courses at approved locations, meeting the standards set out by the Department and its Administrative Rules, Title 37 T.A.C. Chapter 31, Standards for an Approved Motorcycle Operator Training Course, as amended, promulgated under authority vested in the Department by Section 662.009, Transportation Code.

III. RESPONSIBILITIES OF THE CONTRACTOR:

The Contractor shall:

1. Comply with the requirements of Chapter 662 of the Texas Transportation Code and 37 T.A.C. Chapter 31 in the performance of their responsibilities outlined herein.
2. Conduct quality motorcycle operator training courses using the Department-approved, Basic and Advanced Motorcycle Operator Training course curricula as outlined in the Department's Administrative Rules, Section 31.6, Approved Standard Motorcycle Training Courses.
3. Register students for the courses and collect tuition fees.

4. Contract with, schedule and compensate Department-approved Instructors to teach the course(s). Each Instructor employed or contracted by or associated with the Contractor shall be deemed an agent of the Contractor, and the Contractor shall share responsibility for all acts performed by the Instructor, which are within the scope of employment and which occur during the course of employment.
5. When applicable, provide or make arrangements for a storage facility suitable to environmentally and physically secure motorcycles and other equipment used during the conduct of the course(s). The Contractor remains responsible for the stored motorcycles and/or equipment regardless of whether the storage is provided or arranged.
6. When applicable, arrange for the transportation and maintenance of loan motorcycles as needed.
7. Provide access to and use of classroom facilities suitable for instruction, including appropriate audio/visual equipment for presenting the specific curricula.
8. Provide a paved area for the riding portion of the curriculum that meets the following criteria:
 - a. Be roughly 200 feet by 300 feet.
 - b. Minimum run-off of 20 feet to a flat surface.
 - c. Minimum run-off of 30 feet to a pole, column or curb.
 - d. Minimum run-off of 40 feet to a fence, building, drop off or traffic of any kind.
 - e. Be free of potholes and other surface hazards and obstacles in the range or within 20 feet of the perimeter.
 - f. Be relatively flat.
 - g. Be capable of being closed to vehicular and pedestrian traffic.
9. Make arrangements so that the range area will be free of parked cars, vehicular and pedestrian traffic during riding sessions.
10. Issue Motorcycle Operator Training Course Completion Cards (MSB-8, MSB-8R, MSB-O) for Department approved courses. Instructors may not complete, issue or validate a certificate of course completion to a person who has not successfully completed the course.
11. Maintain a numerical record of the individuals receiving a serialized Motorcycle Operator Training Course Completion Card (MSB-8, MSB-8R, MSB-O), and provide protective measures to ensure that unissued cards are secured. Failure to provide a numerical accounting of issued and unissued Motorcycle Operator Training Course Completion Cards shall be considered cause for revocation of approval to offer the motorcycle operator training course.
12. By the third business day following the end of each class report electronically, using Department provided reporting system, information relating to individual students enrolled.
 - a. Student's full legal name must be written on Student Report as shown on Driver's License.
 - b. If incorrect or incomplete information is received, the Contractor will be contacted to resubmit with corrections within five workdays.
13. Within forty-eight (48) hours of an incident, report electronically using Department provided reporting system.
14. Provide access by members of the Department or Designee of the Department of classroom, range, records and storage areas for purposes of contract compliance audit.
15. Publicize and/or advertise the course using locally developed or Department provided literature.

16. Maintain or arrange for the maintenance of the painted instructional design of the paved area for the motorcycle-riding phase of the curriculum. The Contractor remains responsible for the painted instructional design regardless of whether the maintenance is provided or arranged.
17. Schedule, at regular intervals, basic and/or advanced motorcycle operator training courses during the contract period. A schedule of courses shall be furnished to the Department upon request. Contractor to submit written notification to Department if training does not occur for a period exceeding sixty (60) calendar days at which time all state property may be returned to the Department. If courses are not offered and conducted for ninety (90) calendar days, state issued resources may be returned to the Department.
18. Ensure attendance of the Sponsor Update by Contractor Signatory or Designated Representative and attendance of Statewide Conference by Contractor-designated Educational Representative.
19. Obtain an insurance policy that provides at least Two Million Dollars (\$2,000,000) in liability and Ten Thousand Dollars (\$10,000) in medical coverage and if desired coverage for repairing damage to training motorcycles. Provide the Department a copy of the Contractor's certificate of insurance upon renewal and whenever changes occur in policy coverage.
20. Provide a copy of any current motorcycle loan agreements and proof of insurance to the Department within three (3) calendar days of contract signature and upon request. Each year, one month prior to contract renewal and upon request, provide to the Department a list of motorcycles to include VIN, condition, and pictures if requested.
21. Ensure compliance with the Department's Administrative Rules, Section 31.7, Motorcycle Requirements, when teaching the Basic or Advanced Motorcycle Operator Training Courses.
22. Ensure that all course participants and Instructors wear protective gear whenever riding during the course. The minimum protective gear is as follows:
 - a. Motorcycle helmet meeting Federal Department of Transportation standards;
 - b. Eye protection;
 - c. Over-the-ankle footwear (not cloth, canvas, etc.);
 - d. Long-sleeved shirt or jacket;
 - e. Long, non-flared denim pants or equivalent; and,
 - f. Full-fingered gloves, preferably leather.
23. Provide a new original RiderCourse Handbook, one for each student enrolled in the Basic Motorcycle Operator Training Course.
24. Execute, and maintain in effect at all times during the term of this Contract, a Rider Education Recognition Program (RERP) Agreement with the Motorcycle Safety Foundation.
25. Nonconformance with any portion of this Contract may result in immediate cancellation of approval to conduct motorcycle operator training and affect future renewal opportunities.
26. Such other duties and responsibilities as may be assigned to the Contractor by the Department, consistent with the rules and regulations under which this Contract is entered into and consistent with the accomplishment of the overall goals of the parties hereto.

27. Only use the materials provided by the Department under Section IV for the furtherance of the course contemplated by this Contract and not in the performance of any other training, agreement or contract.
28. Abide by Texas Sponsor Rules of Professional Conduct and submit current signed document at contract renewal.
29. Maintain current landowner Use Agreement for Department approved classroom and ranges and furnish to Department upon request.

IV. RESPONSIBILITIES OF THE DEPARTMENT:

The Department shall:

1. Provide the following Basic Motorcycle Operator Training Course material and assistance at no cost to the Contractor subject to availability and critical need areas:
 - a. Motorcycle Operator Manual, one for each student enrolled in the basic motorcycle operator training course, subject to availability.
 - b. Program documentation forms, as needed.
 - c. Motorcycle helmets and replacements thereof, subject to availability.
 - d. Training motorcycles based on area need, subject to availability.
 - e. Initial cones for use in the riding portion of the course, subject to availability.
 - f. Initial design, layout, and painting of the paved area for the riding portion of the course.
 - g. Assistance and materials to help promote the program, subject to availability.
 - h. On-site evaluation and technical assistance visits.
 - i. Monitoring of the Contractor's compliance with performance and fiscal requirements of this Contract.
 - j. Program management assistance, as appropriate.
2. Provide the following for the Advanced Motorcycle Operator Training Course.
 - a. Advanced Motorcycle Operator Training Course training materials for each student enrolled, subject to availability.
 - b. Program documentation forms, as needed.
 - c. Initial cones for use in the riding portion of the course, subject to availability.
 - d. Initial design, layout, and painting of the paved area for the riding portion of the course.
 - e. Assistance and materials to help promote the program, subject to availability.
 - f. On-site evaluation and technical assistance visits.
 - g. Monitoring of the Contractor's compliance with performance and fiscal requirements of this Contract.
 - h. Program management assistance, as appropriate.

V. FINANCIAL CONSIDERATIONS.

1. Tuition Fees

- a. **Basic Motorcycle Operator Training Course.** The Contractor may not charge the student tuition (which includes all instructional fees, material fees, book fees, laboratory fees, etc.) totaling more than Two Hundred Thirty Five Dollars (\$235.00).

- b. **3-Wheel Basic Rider Course.** The Contractor may not charge the student tuition (which includes all instructional fees, material fees, book fees, laboratory fees, etc.) totaling more than Two Hundred Fifty Dollars (\$250.00).
- c. **Advanced Motorcycle Operator Training Course.** The Contractor may not charge the student tuition (which includes all instructional fees, material fees, book fees, laboratory fees, etc.) totaling more than One Hundred Twenty Five Dollars (\$125.00). When the Advanced Course is offered for operator with a passenger, the maximum tuition may be charged of One Hundred Twenty Five Dollars (\$125.00) for each passenger.
- d. **Exceptions to the Above.** For courses with one to three students, the Contractor may charge each student a maximum tuition equal to the total tuition for four students divided by the actual number of students taking the course. (Example for the Basic Rider Course: \$940.00/number of students equals the tuition for each student).

VI. CONTRACT AMENDMENTS: Modifications or amendments to this Contract are only valid if they are in writing and are signed and dated by both parties.

VII. TERMINATION: Either party to this Contract may, at their convenience, terminate this Contract by one giving to the other, or each giving to the other, written notice of such termination and specifying the effective date at least thirty (30) calendar days prior to the effective date of such termination so specified.

VIII. TERMINATION AND CANCELLATION: Pursuant to Section 662.008 of the Texas Transportation Code and 37 T.A.C. Chapter 31, the Department has the right to deny, suspend or cancel this Contract.

IX. CONTRACT REASSIGNMENT: This Contract may not be assigned or transferred and is only valid as to the Contractor listed herein.

X. DISCRIMINATION: The Contractor, with regard for the work performed by it during this Contract, shall not discriminate on the basis of race, color, sex, religion, age, handicap, national origin, or make or type of motorcycle ridden in the selection, training, and/or retention of Instructors or participants in the Motorcycle Operator Training Program.

XI. HOLD HARMLESS: The Contractor is an independent agency and not an agent, servant, or employee of the Department. To the extent allowed by law, the Contractor shall hold the State and its representatives harmless from and against any and all suits, causes of action, claims, real or imagined, of any kind or character brought by any person or entity or representative of any person, as a result of any alleged or imagined damage to any person or property, alleged to be a consequence of any act on the part of the Contractor or its employees, be it an act of commission or omission. Further the Contractor specifically warrants that it will defend and indemnify the State of Texas from and against any and all costs regarding the defense of any such claim and will wholly and completely provide for the defense of such claims to the extent that the Contractor is legally capable under the laws and Constitution.

XII. RETENTION OF RECORDS: The Contractor shall maintain records, documents, and other evidence pertaining to the courses offered under this for a period of three (3) fiscal years plus current

fiscal year and/or the last date of action on a State of Texas voucher. Within this timeframe, Contractor is required to issue replacement certificates to students and may charge a fee up to Ten Dollars (\$10) for a lost certificate.

XIII. TERM OF CONTRACT: This Contract becomes effective upon signature of both parties but not prior to **September 1, 2015**, and terminates on **August 31, 2017**.

XIV. EXPENDITURES: Expenditures are not reimbursable.

XV. APPLICABLE LAW. The laws of the State of Texas applicable to contracts made and performed entirely therein thereto shall govern this Contract and all materials and / or issues collateral.

XVI. MISCELLANEOUS PROVISIONS.

1. Except as provided by Texas and / or Federal laws and regulations, neither party shall have control over the other party with respect to its hours, times, employment, etc.
2. Under no circumstances shall either party be deemed an employee of the other.
3. The parties warrant that their mutual obligations shall be performed with due diligence in a safe and professional manner and in compliance with any and all applicable statutes, rules and regulations.
4. Texas Government Code, Chapter 2260, prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. If and to the extent Chapter 2260 applies to this Contract, the Contractor shall comply with the requirements of Chapter 2260 and the Department's Administrative Rules adopted pursuant to Chapter 2260.
5. Pursuant to Section 2155.4441 of the Texas Government Code, the Contractor shall buy Texas products and materials for use in providing the services authorized in this Contract when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.
6. Under Section 231.006, Family Code, the Contractor certifies that the individual or business named in this Contract is not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
7. Force Majeure - Either party may be excused from performance under this Contract for any period that such party is prevented from performing its obligations in whole or in part as a result of any act of God, war, civil disturbance, epidemic, court order, or other event outside the control of such party, provided the party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within such party's control.
8. Gifts – Except as stated in this Contract, Contractor has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Contract.
9. Debt to State – Contractor agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

10. Department Employee within Last 12 Months – Pursuant to Section 2252.901 of the Texas Government Code, a state agency is prohibited from entering into a contract with a former employee of the agency within one year of the employee’s departure from the state agency. The Contractor certifies that if he is a former employee of the Department, that he has not been an employee of the Department within the last twelve (12) months.
11. Executive Director of the Department – Pursuant to Section 669.003 of the Texas Government Code, relating to contracting with an executive director of a state agency, Contractor represents that no person who, in the past four years, served as the executive director of the Department was involved with or has any interest in this Contract.

XVII. LIMITATIONS OF AUTHORITY.

1. Neither party has authority for and on behalf of the other except as provided in this Contract. No other authority, power, partnership, use or rights are granted or implied except as provided by Texas and /or Federal laws and regulations.
2. Neither party may incur any debt, obligation, expense or liability of any kind on behalf of the other party without the other party’s express written approval.

XVIII. VENUE. Venue to enforce this contract shall lie exclusively in Travis County, Texas.

XIX. CONTRACT SIGNATURES: It is mutually understood that a person or officer of the Contractor that is authorized to do so according to the normal operating procedures of said Contractor shall sign this Contract. If the governing body of the Contractor is required to approve this Contract, it shall not become effective until approved by that governing body.

CONTRACTOR

TEXAS DEPARTMENT OF PUBLIC SAFETY

By: _____
Signature

By: _____
Signature

Printed name

Frank Woodall
Printed name

Title: _____

Title: Assistant Director,
Education, Training & Research

Date: _____

Date: _____