



Professional Services Contract Terms and Conditions

The Consultant agrees to provide the County with the scope of work as outlined in the contract documents, including but not limited to labor, equipment, materials and other items necessary to perform the Work. The services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the Consultant's profession currently practicing under similar conditions.

1. Invoicing and Taxes

- 1.1 The County agrees to pay the Consultant within 35 days of date of receipt per Minnesota State Statute #471.425 subd 2a. "Date of receipt" means the completed delivery of the goods or services or the satisfactory installation, assembly or specified portion thereof, or the receipt of the invoice for the delivery of goods or services, whichever is later. The Consultant's invoice shall include the County's contract number.
- 1.2 Per Minnesota State Statute 297A.70, Olmsted County is exempt from the current State and City of Rochester imposed sales tax rate. If the contract requires the Consultant to purchase goods to complete the scope of work, the Consultant shall pay applicable taxes and include the cost of the tax in their fee to the County. The County will not appoint any Consultant or Sub-Consultant as a 'Purchasing Agent'; therefore, the Consultant shall not make purchases assuming the County's tax exemption status. If the Consultant is a reseller of certain goods, for example, technology, the County will provide an ST3 form after contract award for tax exemption purposes.
- 1.3 Financial obligations of the County, payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. Olmsted County may cancel or reduce the amount of services to be rendered if the County determines that such action is in the County's best interest, or that there will be a lack of funding available for the service. In such event, Olmsted County will notify the Consultant in writing thirty (30) days in advance of the date such cancellation or reduction is to be effective.
- 1.4 Reimbursable expenses, if applicable, shall be reimbursed at the current IRS rates, and per diem amounts.

2. County Right of Setoff

- 2.1 If the Consultant is more than 30 days past due on any account due to the County, the County may apply payments due to the Consultant under this Agreement to the Consultant's overdue account in lieu of payment directly to the Consultant. The application of payments to the overdue account shall be deemed payments due under this Agreement.

3. Conflict of Interest

- 3.1 No employee, officer or agent of Olmsted County shall participate in the administration, of this Agreement if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when one of the following has a financial or other interest in Consultant:
 - 3.1.1 The employee, or an officer or agent of the employee;
 - 3.1.2 Any member of the employee's immediate family;
 - 3.1.3 The employee's business partner; or
 - 3.1.4 An organization which employs, or is about to employ, any of the above.
- 3.2 Olmsted County's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Consultants, potential Consultants, sub-Consultants, or other parties to sub-agreements whereby the intent could reasonably be inferred as influencing the employee in the performance of his or her duties or was intended as a reward for any official act on his or her part.

4. Ownership of Instruments of Service

- 4.1 All reports, plans, specifications, field data and notes documents and other work product, including all electronic media, prepared by Consultant, as instruments of service for the County pursuant to this Agreement shall remain the property of the County. The County agrees to indemnify the Consultant for re-use of such work product for other projects or for additions to this project without the Consultant's involvement.

5. Independent Contractor

- 5.1 Consultant is an Independent Contractor. Nothing contained in this Agreement is intended or should be construed as creating the relationship of co-partners or joint ventures with the County. No tenure or any rights or benefits, including workers' compensation, unemployment insurance, medical care, sick leave, vacation leave, severance pay, or other benefits available to the County employees, shall accrue to Consultant or employees of Consultant performing services under this Agreement.

6. Legal Compliance

- 6.1 Non-Discrimination. No person shall, on the ground of race, color, religion, age, sex, disability, marital status, public assistance status, affectional preference, familial status, ancestry, creed, or national origin be excluded from full employment rights in, participation in, be denied the benefits of or be otherwise subjected to discrimination under any and all applicable Federal and State laws against discrimination.
- 6.2 Data Privacy. For purposes of this Agreement all data created, collected, received, stored, used, maintained, or disseminated by Consultant in the performance of this Agreement is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Chapter 13 and the Minnesota Rules implementing the Act now in force or hereafter adopted as well as the Federal laws on data privacy. If Consultant is

performing a governmental function as defined in Minn. Stat. Section 13.05, Subd. 11 as part of its contract duties, it must comply with those requirements as if it were a governmental entity. The remedies in Minn. Stat. Section 13.08 apply to the Consultant. Consultant does not have a duty to provide access to public data to the public if the public data are available from the County, except as required by the terms of this Agreement. All subcontracts shall contain the same or similar data practices compliance requirements.

- 6.3 Business Records. Consultant shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession. Consultant shall maintain such records for at least 6 years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period. All accounting records shall be kept in accordance with generally accepted accounting practices. County shall have the right to audit and review all such documents and records at any time during Consultant's regular business hours or upon reasonable notice. These records are subject to examination, duplication, transcription and audit by County and either the Legislative or State Auditor of the State of Minnesota pursuant to Minnesota Statute § 16C.05, subd 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Agreement.
- 6.4 Laws and Regulations. Consultant shall comply with all applicable federal and state statutes and regulations as well as local ordinances now in effect or hereafter adopted.
- 6.5 Worker Health, Safety and Training. Consultant shall be solely responsible for the health and safety of its employees in connection with the work performed under this Contract. Consultant shall make arrangements to ensure the health and safety of all subconsultants and other persons who may perform work in connection with this Contract. Consultant shall ensure all personnel of Consultant and subconsultants are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks engaged in under this Contract. Consultant shall comply with federal, state and local occupational safety and health standards, regulations and rules promulgated pursuant to the Occupational Health and Safety Act which are applicable to the work to be performed by Consultant.

7. Indemnification

- 7.1 Consultant agrees to indemnify and hold Olmsted County, its officers and employees, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character (hereinafter collectively "claims") arising directly out of the Consultant's negligent acts, errors or omissions, or from the legal fault of the Consultant in the performance of this Agreement and those of its sub-Consultants or anyone for whom Consultant is legally liable. This includes, but is not limited, to any and all such claims, relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court.

8. Insurance

- 8.1 The Consultant shall purchase, provide and maintain, at its own expense, such insurance as indicated in the Contract Documents.

9. Contract Modifications

- 9.1 Oral change orders will not be permitted. No change in the Agreement shall be made unless Olmsted County gives its prior written approval. Consultant shall be liable for all costs resulting from, and/or for satisfactorily correcting, any change not properly ordered by written modification to the Agreement and signed by Olmsted County. Within seven (7) calendar days after receipt of the written change order to modify the Agreement, Consultant shall submit to Olmsted County a detailed price and schedule proposal for the work to be performed. This proposal shall be subject to negotiations between Consultant and Olmsted County. After the proposal is accepted by the County, detailed modifications shall be executed in writing by both parties. Disagreements that cannot be resolved with negotiations shall be resolved in accordance with the contract disputes clause, herein.

10. Dispute Resolution

- 10.1 In the event of a dispute between the Consultant and the County, the parties shall engage in mediation of the dispute. The Consultant and the County shall select an independent, mutually acceptable third party to mediate the matter. This independent third party shall mediate the dispute, and failing to reach an agreement, shall have exclusive and final jurisdiction to render a decision in a dispute with a monetary value not to exceed \$25,000. In a dispute in excess of this amount, the parties may agree to an arbitrator or submit the dispute to Olmsted County District Court or any applicable federal court with jurisdiction. The Consultant and the County will split the cost of mediation or arbitration, with each party paying half the cost.

11. Waiver of Terms and Conditions

- 11.1 The failure of Olmsted County or Consultant to enforce one or more of the terms or conditions of the Agreement or to exercise any of its rights or privileges, or the waiver by Olmsted County of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

12. Assignment of Contractual Rights

- 12.1 It is agreed that the Consultant will not assign, transfer, convey or otherwise dispose of the Agreement or its right, title or interest in or to the same, or any part thereof, without previous written consent of Olmsted County and any sureties, and subject to such conditions and provisions as the County may deem necessary. The Consultant shall be responsible for the performance of all sub-Consultants.

13. Interpretation, Jurisdiction, and Venue

13.1 All contractual agreements shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of Minnesota. The Consultant hereby consents and submits to the jurisdiction of the appropriate courts of Minnesota or of the United States having jurisdiction in Minnesota for adjudication of any suit or cause of action arising under or in connection with the contract documents, or the performance of such Agreement, and agrees that any such suit or cause of action may be brought in any such court.

14. Severability

14.1 To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

15. Termination

15.1 The Agreement may be terminated by the mutual consent of both parties, or by either party upon 30 days unless otherwise noted on the Contract Signature Page, with or without cause, by notifying the authorized representative.

15.2 The County may terminate this Agreement effective upon delivery of written notice to the Consultant, or at such later date as may be established by the County, under any of the following conditions:

15.2.1 If County funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The Agreement may at the County's option or in the County's sole discretion be modified to accommodate a reduction in funds.

15.2.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.

15.2.3 If any license or certificate required by law or regulation to be held by the Consultant to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

15.3 Any such termination of the Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

15.4 Consultant will perform the Work as expeditiously as is consistent with professional skill and care and the orderly progress of the project. The County by written notice of default (including breach of contract) to the Consultant may terminate the whole or any part of this agreement:

15.4.1 If the Consultant fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or

15.4.2 If the Consultant fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice

from the County, fails to correct such failures within a period of 10 calendar days or such longer period as the County may authorize in writing after receipt of notice from the County specifying such failure. If the County grants Consultant an extension of time to perform, any such extension of time shall not operate to release any surety from its obligations; or

15.4.3 If Consultant admits in writing it is bankrupt, or by a filing by the Consultant of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Consultant, unless dismissed within ninety (90) days; or

15.4.4 If the Consultant makes any arrangement with or for the benefit of Consultant's creditors involving an assignment to a trustee, receiver or similar beneficiary; or

15.4.5 If the Consultant makes any material misrepresentations in the documents provided and relied upon by the County in the making of this agreement; or

15.4.6 If a court of competent jurisdiction finds that the Consultant persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction.

15.5 In such event, the Consultant shall be entitled to compensation for work performed in compliance with the contract specifications up to the date of termination based upon payment terms of this Agreement. Such payment will not exceed the maximum amount provided for by the terms of this Agreement.

15.6 The rights and remedies of the County provided in this clause related to defaults (including breach of contract) by the Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

16. Force Majeure

16.1 Neither party shall be held responsible for delay or failure to perform caused by fire, flood, epidemic, pandemic, strikes, riot, acts of God, unusually severe weather, terrorism, war, acts of public authorities other than Olmsted County or delays or defaults caused by public carriers which was beyond a party's reasonable control, provided the defaulting party gives notice as soon as possible to the other party of the inability to perform.

17. General Considerations

17.1 Consultant will perform the Project in a timely manner, but it is hereby agreed that Consultant cannot be held responsible for delays occasioned by factors which are beyond its control, or by factors which could not reasonable have been foreseen at the time this Agreement was prepared and executed. The Consultant shall be required to exercise the level of skill and care ordinarily exercised by members of the Consultant's profession practicing under similar conditions.