

# **ATTACHMENT A**

**RFP General Terms & Conditions**

## **General Conditions for Request For Proposals (RFP)**

(Revised: Dec, 2015)

The General Conditions are terms and conditions that the City expects all of its Service Provider to meet. The Consultant agrees to be bound by these requirements unless otherwise noted in the Proposal. The Consultant may suggest alternative language to any section at the time it submits its response to this RFP. Some negotiation is possible to accommodate the Consultant's suggestions.

### **1. City's Rights**

The City reserves the right to reject any or all proposals or parts of proposals, to accept part or all of proposals on the basis of considerations other than lowest cost, and to create a project of lesser or greater expense and reimbursement than described in the Request for Proposal, or the respondent's reply based on the component prices submitted.

### **2. Equal Opportunity Statement**

The Service Provider agrees to comply with applicable provisions of applicable federal, state and city regulations, statutes and ordinances pertaining to the civil rights and non-discrimination in the application for and employment of applicants, employees, subcontractors and suppliers of the Service Provider. Among the federal, state and city statutes and ordinances to which the Service Provider shall be subject under the terms of this Contract include, without limitation, Minnesota Statutes, section 181.59 and Chapter 363A, Minneapolis Code of Ordinances Chapter 139, 42 U.S.C Section 2000e, et. seq. (Title VII of the Civil Rights Act of 1964), 29 U.S.C Sections 621-624 (the Age Discrimination in Employment Act), 42 U.S.C Sections 12101-12213 (the Americans with Disability Act or ADA), 29 U.S.C Section 206(d) (the Equal Pay Act), 8 U.S.C Section 1324 (the Immigration Reform and Control Act of 1986) and all regulations and policies promulgated to enforce these laws. The Service Provider shall have submitted and had an "affirmative action plan" approved by the City prior to entering into a Contract.

### **3. Insurance**

Insurance secured by the Service Provider shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the Contract and shall remain continuously in force for the duration of the Contract.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Service Provider. Any policy deductibles or retention shall be the responsibility of the Service Provider. The Service Provider shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Service Provider's interest or provide adequate coverage. Evidence of coverage is to be provided on a current ACORD Form. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. The Service Provider shall require any of its subcontractors, if sub-

contracting is allowable under this Contract, to comply with these provisions, or the Service Provider will assume full liability of the subcontractors.

The Service Provider and its subcontractors shall secure and maintain the following insurance:

- a) **Workers Compensation** insurance that meets the statutory obligations with Coverage B- Employers Liability limits of at least \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease each employee.
- b) **Commercial General Liability** insurance with limits of at least \$2,000,000 general aggregate, \$2,000,000 products - completed operations \$2,000,000 personal and advertising injury, \$100,000 each occurrence fire damage and \$10,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured. The amount of coverage will be automatically increased if the project amount is expected to exceed \$2,000,000 or involves potentially high risk activity.
- c) **Commercial Automobile Liability** insurance covering all owned, non-owned and hired automobiles with limits of at least \$1,000,000 per accident.
- d) **Professional Liability** Insurance or Errors & Omissions Insurance providing coverage for 1) the claims that arise from the errors or omissions of the Service Provider or its subcontractors and 2) the negligence or failure to render a professional service by the Service Provider or its subcontractors. The insurance policy should provide coverage in the amount of \$2,000,000 each claim and \$2,000,000 annual aggregate. The insurance policy must provide the protection stated for two years after completion of the work.
- e) **Network Security and Privacy Liability** for the duration of this agreement providing coverage for, but not limited to, Technology and Internet Errors & Omissions, Security and Privacy Liability, and Media Liability. Insurance will provide coverage against claims that arise from the disclosure of private information from files including but not limited to: 1) Intentional, fraudulent or criminal acts of the Service Provider, its agents or employees. 2) Breach of the City's private data, whether electronic or otherwise. The insurance policy should provide minimum coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If written on a Claims-Made basis, the policy must remain in continuous effect for at least 3 years after the service is provided or include a 3 year extended reporting period.

#### 4. **Hold Harmless**

The Service Provider will defend, indemnify and hold harmless the City and its officers and employees from all liabilities, claims, damages, costs, judgments, lawsuits and expenses, including court costs and reasonable attorney's fees regardless of the Service Provider's insurance coverage, arising directly from any negligent act or omission of the Service Provider, its employees, agents, by any sub-contractor or sub-Service Provider, and by any employees of the sub-contractors and sub-Service Provider of the Service Provider, in the performance of work and delivery of services provided by or through this Contract or by reason of the failure of the Service Provider to perform, in any respect, any of its obligations under this Contract.

The City will defend, indemnify and hold harmless the Service Provider and its employees from all liabilities, claims, damages, costs, judgments, lawsuits and expenses including court costs and reasonable attorney's fees arising directly from the negligent acts and omissions of the City by reason of the failure of the City to perform its obligations under this Contract. The provisions of the Minnesota Statutes, Chapter 466 shall apply to any tort claims brought against the City as a result of this Contract.

Except as provided in the section titled Data Practices, neither party will be responsible for or be required to defend any consequential, indirect or punitive damage claims brought against the other party.

**5. Subcontracting**

The Service Provider shall provide written notice to the City and obtain the City's authorization to sub-contract any work or services to be provided to the City pursuant to this Contract. As required by Minnesota Statutes, Section 471.425, the Service Provider shall pay all subcontractors for subcontractor's undisputed, completed work, within ten (10) days after the Service Provider has received payment from the City.

**6. Assignment or Transfer of Interest**

The Service Provider shall not assign any interest in the Contract, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of the City. The Service Provider shall not subcontract any services under this Contract without prior written approval of the City Department Contract Manager designated herein.

**7. General Compliance**

The Service Provider agrees to comply with all applicable Federal, State and local laws and regulations governing funds provided under the Contract.

**8. Performance Monitoring**

The City will monitor the performance of the Service Provider against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this Contract. If action to correct such substandard performance is not taken by the Service Provider within a reasonable period of time to cure such substantial performance after being notified by the City, Contract termination procedures will be initiated. All work submitted by Service Provider shall be subject to the approval and acceptance by the City Department Contract Manager designated herein. The City Department Contract Manager designated herein shall review each portion of the work when certified as complete and submitted by the Service Provider and shall inform the Service Provider of any apparent deficiencies, defects, or incomplete work, at any stage of the project.

**9. Prior Uncured Defaults**

Pursuant to Section 18.115 of the City's Code of Ordinances, the City may not contract with persons or entities that have defaulted under a previous contract or agreement with the City and have failed to cure the default.

**10. Independent Service Provider**

Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Service Provider shall at all times remain an independent Service Provider with respect to the work and/or services to be performed under this Contract. Any and all employees of Service Provider or other persons engaged in the performance of any work or services required by Service Provider under this Contract shall be considered employees or subcontractors of the Service Provider only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered or provided herein, shall be the sole obligation and responsibility of the Service Provider.

**11. Accounting Standards**

The Service Provider agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices (GAAP) to properly account for expenses incurred under this Contract.

**12. Retention of Records**

The Service Provider shall retain all records pertinent to expenditures incurred under this Contract in a legible form for a period of six years commencing after the later of contract close-out or resolution of all audit findings. Records for non-expendable property acquired with funds under this Contract shall be retained for six years after final disposition of such property.

**13. Data Practices**

The Service Provider agrees to comply with the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13) and all other applicable state and federal laws relating to data privacy or confidentiality. The Service Provider and any of the Service Provider's sub-Service Provider or sub-contractors retained to provide services under this Contract shall comply with the Act and be subject to penalties for non-compliance as though they were a "governmental entity." The Service Provider must immediately report to the City any requests from third parties for information relating to this Contract. The City agrees to promptly respond to inquiries from the Service Provider concerning data requests. The Service Provider agrees to hold the City, its officers, and employees harmless from any claims resulting from the Service Provider's unlawful disclosure or use of data protected under state and federal laws.

All Proposals shall be treated as non-public information until the Proposals are opened for review by the City. At that time, the names of the responders become public data. All other data is private or non-public until the City has completed negotiating the Contract with the selected Service Provider(s). At that time, the proposals and their contents become public data under the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 and as such are open for public review.

#### **14. Inspection of Records**

Pursuant to Minnesota Statutes, Section 16C.05, all Service Provider payroll and expense records with respect to any matters covered by this Contract shall be made available to the City and the State of Minnesota, Office of the State Auditor, or their designees upon notice, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

#### **15. Living Wage Ordinance**

The Service Provider may be required to comply with the “[Minneapolis Living Wage and Responsible Public Spending Ordinance](http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert_255695.pdf)” ([http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert\\_255695.pdf](http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert_255695.pdf)), Chapter 38 of the City’s Code of Ordinances (the “Ordinance”). Unless otherwise exempt from the ordinance as provided in Section 38.40 (c), any City contract for services valued at \$100,000 or more or any City financial assistance or subsidy valued at \$100,000 or more will be subject to the Ordinance’s requirement that the Service Provider and its subcontractors pay their employees a “living wage” as defined and provided for in the Ordinance.

#### **16. Applicable Law**

The laws of the State of Minnesota shall govern all interpretations of this Contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the Service Provider.

#### **17. Conflict and Priority**

In the event that a conflict is found between provisions in this Contract, the Service Provider's Proposal or the City's Request for Proposals, the provisions in the following rank order shall take precedence: 1) Contract; 2) Proposal; and last 3) Request for Proposals (only for Contracts awarded using RFP).

#### **18. Travel**

If travel by the Service Provider is allowable and approved for this Contract, then Service Provider travel expenses shall be reimbursed in accordance with the City’s [Consultant Travel Reimbursement Conditions](http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/wcms1p-096175.pdf) (<http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/wcms1p-096175.pdf>).

**19. Billboard Advertising**

City Code of Ordinance 544.120, prohibits the use of City and City-derived funds to pay for billboard advertising as a part of a City project or undertaking.

**20. Conflict of Interest/Code of Ethics**

Pursuant to Section 15.250 of the City's Code of Ordinances, both the City and the Service Provider are required to comply with the City's Code of Ethics. Chapter 15 of the Code of Ordinances requires City officials and the Service Provider to avoid any situation that may give rise to a "conflict of interest." A "conflict of interest" will arise if Service Provider represents any other party or other client whose interests are adverse to the interests of the City.

As it applies to the Service Provider, the City's Code of Ethics will also apply to the Service Provider in its role as an "interested person" since Service Provider has a direct financial interest in this Agreement. The City's Code of Ethics prevents "interested persons" from giving certain gifts to employees and elected officials.

**21. Termination, Default and Remedies**

The City may cancel this Contract for any reason without cause upon thirty (30) days' written notice. Both the City and the Service Provider may terminate this Contract upon sixty (60) days' written notice if either party fails to fulfill its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of this Contract. The non-defaulting party shall have the right to terminate this Contract, if the default has not been cured after ten (10) days' written notice or such other reasonable time period to cure the default has been provided. If termination shall be without cause, the City shall pay Service Provider all compensation earned to the date of termination. If the termination shall be for breach of this Contract by Service Provider, the City shall pay Service Provider all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the Contract is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Service Provider under this Contract shall, at the option of the City, become the property of the City, and the Service Provider shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, the Service Provider shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Contract by the Service Provider. The City may, in such event, withhold payments due to the Service Provider for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by the Service Provider, from asserting any other right or remedy allowed by law, equity, or by statute. The Service Provider has not waived any rights or defenses in seeking any amounts withheld by the City or any damages due the Service Provider.

## **22. Ownership of Materials**

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from this Contract shall become the property of the City upon the City's payment for and final approval of the final report or upon payment and request by the City at any time before then. The City at its own risk, may use, extend, or enlarge any document produced under this Contract without the consent, permission of, or further compensation to the Service Provider.

## **23. Intellectual Property**

All Work produced by the Service Provider under this Contract is classified as "work for hire" and upon payment by the City to the Service Provider will be the exclusive property of the City and will be surrendered to the City immediately upon completion, expiration, or cancellation of this Contract. "Work" covered includes all reports, notes, studies, photographs, designs, drawings, specifications, materials, tapes or other media and any databases established to store or retain the Work. The Service Provider may retain a copy of the work for its files in order to engage in future consultation with the City and to satisfy professional records retention standards. The Service Provider represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

Each party acknowledges and agrees that each party is the sole and exclusive owner of all right, title, and interest in and to its services, products, software, source and object code, specifications, designs, techniques, concepts, improvements, discoveries and inventions including all intellectual property rights thereto, including without limitations any modifications, improvements, or derivative works thereof, created prior to, or independently, during the terms of this Contract. This Contract does not affect the ownership of each party's pre-existing, intellectual property. Each party further acknowledges that it acquires no rights under this Contract to the other party's pre-existing intellectual property, other than any limited right explicitly granted in this Contract.

## **24. Equal Benefits Ordinance**

Minneapolis Code of Ordinances, Section 18.200, relating to equal benefits for domestic partners, applies to each Service Provider and subcontractor with 21 or more employees that enters into a "contract", as defined by the ordinance that exceeds \$100,000. The categories to which the ordinance applies are personal services; the sale or purchase of supplies, materials, equipment or the rental thereof; and the construction, alteration, repair or maintenance of personal property. The categories to which the ordinance does not apply include real property and development contracts.

Please be aware that if a "contract", as defined by the ordinance, initially does not exceed \$100,000, but is later modified so the Contract does exceed \$100,000, the ordinance will then apply to the Contract. A complete text of the ordinance is available at: [http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert\\_261694.pdf](http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert_261694.pdf)

It is the Service Provider's and subcontractor's responsibility to review and understand the requirements and applicability of this ordinance.

## **25. City Ownership and Use of Data**

The City has adopted an Open Data Policy ("Policy"). The City owns all Data Sets as part of its compliance with this Policy. Data Sets means statistical or factual information: (a) contained in structural data sets; and (b) regularly created or maintained by or on behalf of the City or a City department which supports or contributes to the delivery of services, programs, and functions. The City shall not only retain ownership of all City Data Sets, but also all information or data created through the City's use of the software and /or software applications licensed by the Service Provider (or any subcontractor of sub-Service Provider of the Service Provider) to the City.

The City shall also retain the right to publish all data, information and Data Sets independently of this Contract with the Service Provider and any of Service Provider's subcontractors or sub-Service Provider involved in providing the Services, using whatever means the City deems appropriate.

The City shall have the right to access all data, regardless of which party created the content and for whatever purpose it was created. The Service Provider shall provide bulk extracts that meet the public release criteria for use in and within an open data solution. The Service Provider shall permit and allow free access to City information and Data Sets by using a method that is automatic and repeatable. The Data Sets shall permit classification at the field level in order to exclude certain data.

## **26. Cardholder Data and Security Standards**

Should the Service Provider collect revenue on behalf of the City through the acceptance of credit cards offered by cardholders to pay for services offered under the terms of this Contract, then Service Provider represents and acknowledges that the Service Provider will comply with Payment Card Industry (PCI) regulatory standards including the Data Security Standards (DSS). Service Provider represents that it will protect cardholder data. Service Provider will be annually certified as a PCI compliant service provider and agrees to provide evidence of said certification to the City upon request. Service Provider agrees at reasonable times to provide to the City or to its assigns, the audit rights contained herein for all physical locations, systems or networks that process credit cards on behalf of the City. Service Provider also agrees to provide written notice to the City of any breach of a system owned, operated or maintained by the Service Provider that contains cardholder data or information.

## **27. Audit Requirements for Cloud-Based Storage of City Data**

If the Service Provider's services include the storage of City data using a cloud based solution, then the Service Provider agrees to secure the data as though it were "private data" as defined in Minnesota Statutes, Chapter 13. The Service Provider shall provide the City with the annual copy of the Federal Standards for the Statement on Standards for Attestation Engagements (SSAE) No. 16 or the International Standard on Assurance

Engagements (ISAE) No. 3402. The Service Provider agrees to provide a .pdf copy to the City's Contract Manager, upon the Service Provider's receipt of the audit results.

## **28. Small & Underutilized Business Program (SUBP) Requirements**

The City of Minneapolis policy is to provide equal opportunities to all businesses, with an effort to redress discrimination in the City's marketplace and in public contracting against Minority-Owned Business Enterprises (MBEs) and Women-Owned Business Enterprises (WBEs). The SUBP requirements detailed in the Minneapolis Code of Ordinances Chapter 423.50 applies to any professional or technical Service contract in excess of \$100,000. SUBP goals are set on contracts based on project scope, subcontracting opportunities and availability of qualified MBEs/WBEs.

There are no SUBP goals on this RFP. However, if there are subcontracting opportunities later identified, Service Provider shall inform the Contract Manager to obtain authorization as stated under the section titled "Subcontracting" of the Terms and Conditions. Service Provider shall take action to afford MBEs and WBEs full and fair opportunities to compete on this contract and resulting subcontracts. To locate certified MBEs and WBEs under the Minnesota Uniform Certification Program (MnUCP), please visit <http://mnu cp.metc.state.mn.us/> or contact [contractcompliance@minneapolismn.gov](mailto:contractcompliance@minneapolismn.gov).

## **29. Labor Peace**

**No Work Stoppage and Arbitration.** The Service Provider performing services at Minneapolis Convention Center, Water Treatment & Distribution System, Impound Lot and Public Service Center for the City of Minneapolis – ("Service Provider") shall be or become signatory to a valid collective bargaining agreement or other contract under 29 U.S.C Section 185 with any labor organization seeking to represent security officers employed in Service Provider's security operations at the Minneapolis Convention Center, Water Treatment & Distribution, Impound Lot and Public Service Center for the City of Minneapolis as a condition precedent to its contract with the City.

Such collective bargaining agreement or contract shall contain a provision prohibiting the labor organization and its members, and in case of a collective bargaining agreement, all employees covered by the agreement, from engaging in any strike, picketing, work stoppages, work slowdown or the absence of an employee, in whole in part, from the full and faithful and proper performance with the operations of Service Provider for the duration Service Provider's contract with the City (the "No-Strike pledge").

Such collective bargaining agreement or contract must provide that for the duration of Service Provider's contract with the City, all disputes relating to employment conditions or the negotiation thereof shall be submitted to final and binding arbitration.

Service Provider shall be relieved of the obligations of this provision with respect to a labor organization if the labor organization places conditions upon its No-strike pledge that the City Council finds, after notice and hearing to be arbitrary or capricious.

**30. Displaced Contract Service Workers**

The selected Service Provider must comply with Minneapolis Code of Ordinances, Chapter 39, “The Protection of Displaced Contract Service Workers Ordinance” (the “Ordinance”). Section 39.30 and Section 39.40 of the Ordinance generally require the successor Service Provider to retain employees of the previous service provider employed at the site or sites covered under this RFP, for a 90 calendar day transition period. If the performance of one or more of the retained employees is determined by the successor Service Provider to be satisfactory, the successor Service Provider shall offer each transition employee continued employment under the terms and conditions of the successor Service Provider.