

PROFESSIONAL SERVICES TERMS AND CONDITIONS

Unless a separate Professional Services Contract has been executed by the parties for the services to be performed under this Purchase Order, these Terms and Conditions shall apply. Acceptance of this Purchase Order by Contractor by either Contractor's written acknowledgment thereof or commencement of performance under the Purchase Order shall create a binding Contract and shall be conclusive evidence of the Contractor's acceptance of these Terms and Conditions. The Contractor certifies that it has legal authority to enter into this Contract and is at least 18 years of age. This Purchase Order, all attachments referenced herein and amendments, constitute the entire Contract between the City and the Contractor. Where there is a conflict among or between any of these documents, the controlling documents shall be the first listed in the following sequence: Amendment(s) to the Purchase Order, the Purchase Order, Addendum/Addenda to the City's Solicitation, the City's Solicitation, and the Contractor's response to the Solicitation.

Compliance with Law. Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of the City of Vancouver; and rules, regulations, orders, and directives of the City.

Scope of Services. This Contract is a purchase of Professional Services as defined in the Purchase Order. The City may add other related professional services, at its sole discretion, with the agreement of the Contractor. Payment for these services shall not exceed the amount specified on this Purchase Order unless executed in writing by the legally authorized representative of the City.

Amendments. City may make reasonable changes and Contractor shall accommodate without additional expense to the City, such as the place of delivery, installation or inspection, the method of shipment or packing, labeling and identification, and ancillary matters. This Agreement shall not be otherwise altered, changed, or amended except by an instrument in writing executed by the legally authorized parties hereto. Any changes in the scope of work or compensation shall be mutually agreed upon between City and the Contractor and shall be incorporated in written revisions to this Agreement.

Assignment. This Contract may not be assigned in any manner or by any means by Contractor without the express written consent of the City.

Time of Performance. Contractor's performance shall begin on and be completed by the Effective Dates set forth on the Purchase Order.

Delays and Extensions of Time. If the Contractor is delayed at any time in the progress of providing services covered by the Contract, by causes beyond Contractor's control, the time for performance may be extended by such time as shall be mutually agreed upon by Contractor and City and shall be incorporated in a written Amendment to this Contract. Any request for an extension of time must be pre-approved by the City in writing.

Waiver and Remedies. City's failure to enforce the terms or conditions herein or to exercise any right or privilege, or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type. Remedies under this Purchase Order are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.

Binding Effect. The provisions, covenants and conditions in this Purchase Order bind the parties, their legal heirs, representatives, successors, and assigns.

Ratification. Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and affirmed.

Termination. City, at its sole discretion, may terminate this Contract for convenience at any time for any reason. Termination is effective immediately upon notice of termination given by the City. In the event this Contract is terminated prior to the completion of work, Contractor will only be paid for the work completed and accepted, at the City's sole discretion, at the time of termination of the Contract.

Severability. Any invalidity, in whole or in part, of any provision of this Purchase Order shall not affect the validity of any other of its provisions.

Payments. City will pay Contractor submitted invoices within thirty (30) days after the City's receipt and acceptance of the goods or completion and acceptance of the services, provided that Contractor has listed all appropriate information on the invoice and complied with all contractual requirements. Payment shall be full compensation for goods delivered, work performed or services rendered, including all labor, materials, supplies, equipment and other expenses. The City reserves the right to require Contractor to correct any submitted or paid erroneous invoices according to the rates set forth herein. City and Contractor agree that any amount paid in error by City does not constitute a change in the agreed upon amount; Contractor agrees to issue a refund of any overages paid in error by the City. The total on the Purchase Order is to be the not-to-exceed amount and is not to be construed as a guaranteed amount due to Contractor.

Ownership of Records and Documents. All materials, writings and products produced by Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for this Contract, the Contractor hereby further assigns all copyright interests in such materials, writing and products to the City. A copy may be retained by the Contractor.

Non-Discrimination and Equal Employment Opportunity. During the term of this Purchase Order, Contractor will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants and employees are treated fairly, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical disability. Such action shall include all terms and conditions of employment, compensation, and benefits, including apprenticeship.

Proprietary and Confidential Information. Contractor should be aware that any records they submit to the City or that are used by the City even if the Contractor possesses the records, may be public records under the Washington Public Records Act (RCW 42.56). The City may promptly disclose public records upon request unless a statute exempts them from disclosure. Also, Contractor should be aware that if even a portion of a record is exempt from disclosure, generally, the rest of the record must be disclosed. Exemptions, including those for trade secrets and "valuable formula," are narrow and specific.

E-Verify. Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Contract. Contractor shall ensure all Contractor employees and any sub-contractor(s) assigned to perform work under this Contract are eligible to work in the United States. Contractor shall provide verification of compliance upon City request. Failure by the Contractor to comply with this subsection shall be considered a material breach.

Governing Law/Venue. This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington, without regard to the principles of conflict of laws. Any action or suit brought in connection with this Contract shall be brought in the Superior Court of Clark County, Washington.

City Business and Occupation License. Contractors will be required to obtain a business license when contracting with the City of Vancouver, unless allowable exemptions apply. Businesses/Contractors shall contact the State of Washington Business License Service (BLS) at 800-451-7985 or online at <http://bls.dor.wa.gov/file.aspx> or <http://www.cityofvancouver.us/businesslicense>, to determine whether a business license is required pursuant to VMC Ch. 5.04.

Indemnification and Hold Harmless. Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature (including patent infringement or copyright claims) arising out of, or in connection with, or incident to, the performance of services pursuant to this Contract. This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of the City. Contractor specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115. Contractor is an independent contractor and responsible for the safety of employees.

Independent Contractor. Contractor, its subcontractors, agents and employees are independent contractors performing services for the City and are not employees of City. The Contractor, its subcontractors, agents and employees, shall not, as a result of this Contract, accrue leave, retirement, pension, insurance, bonding or any other benefits afforded to City employees. The Contractor, its subcontractors, agents and employees, shall not bind the City in any way except as may be specifically provided herein. The Contractor shall have the authority to control and direct the performance and details of the work described herein.

Insurance. Including any deletions or additions noted on the Purchase Order, the Contractor shall obtain and keep in force during the entire term of this Contract, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor. The amount of coverage provided by such insurance shall be not less than Five Hundred Thousand Dollars (\$500,000) combined single limit for bodily injury and property damage not less than Three Hundred Thousand Dollars (\$300,000) combined single limit for automobile liability.

The Contractor agrees to the following requirements relating to insurance coverage:

- Liability Insurance.** All liability insurance required herein shall be under a comprehensive or commercial general liability and business, automobile policy or policies. The City shall be named as a Certificate Holder and an additional insured with respect to all such policies. Copies of all such policies shall be furnished to the City upon request.
- Worker's Compensation.** Contractor shall take out and maintain during the life of the Contract, Worker's Compensation, including Washington State Stop Gap, insurance for all its employees engaged in work under or pursuant to this Contract who are required to be so covered by the laws of the State of Washington and in case any work is subcontracted, the Contractor shall require the subcontractor to provide worker's compensation insurance for all of its employees unless or to the extent that such employees are covered by the protection provided by the Contractor.
- Employment Security.** Contractor shall comply with all employment security laws of the State of Washington, and shall timely make all required payments in connection therewith.
- Professional Liability Insurance.** Contractor shall obtain and keep in force during the entire term of this Contract, professional liability insurance (errors and omissions) against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or subcontractor. The amount of coverage provided by such insurance shall be not less than Five Hundred Thousand Dollars (\$500,000) combined single limit.

Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "ACORD" or comparable form.

Entirety of Agreement. This Purchase Order incorporates all covenants and understanding between the parties hereto. Other than the execution of a separate Professional Services Agreement, no other prior agreements or understandings, verbal or otherwise, shall be valid or enforceable.

Notices. All notices which are given or required to be given pursuant to this Contract shall be hand delivered or mailed postage paid as follows:

City: City of Vancouver, Attn: Procurement Mgr, P.O. Box 1995, Vancouver, WA 98668
Contractor: The Contractor's address as shown on the Purchase Order.