

**STANDARD TERMS AND CONDITIONS
FOR PUBLIC CONTRACTS
Effective: JANUARY 18, 2019**

These Standard Terms and Conditions apply to contracts entered into by the City of Gresham. Use of the word Contractor below shall mean Consultant when these Standard Terms and Conditions are incorporated into a Personal Services contract. These Standard Terms and Conditions take precedence over supplemental or conflicting terms and conditions in any exhibit to the contract, unless the text of the exhibit expressly states otherwise.

1. **Risk of Loss.** Contractor shall, at its own risk and expense, perform the Work described and furnish all labor, equipment, materials and permits required for the proper performance of the Work. The risk of loss for such Work shall not shift to the City until written acceptance of the Work by the City.
2. **Standard of Care.** Contractor shall perform all Work under this contract in a good and workmanlike manner, in accordance with the degree of care, skill, and diligence, and standards that would ordinarily be used by workers or professionals doing similar work in the relevant industry under similar circumstances.
3. **Errors.** In addition to any other remedies, Contractor shall perform such additional work as may be necessary to correct errors in the Work required without undue delays and without additional cost.
4. **Contractor is an Independent Contractor.**
 - a. Contractor shall perform the Work required by this contract as an independent contractor. Although the City reserves the right (i) to specify the desired results; (ii) to determine (and modify) the delivery schedule for the Work to be performed; and (iii) to evaluate the quality of the completed performance, the City cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
 - b. Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600.
 - c. Contractor certifies that it is licensed under ORS chapter 671 or 701 if the person provides Work for which a license is required under ORS chapter 671 or 701; and Contractor is responsible for obtaining other licenses or certificates necessary to provide the Work.
 - d. If Contractor is submitting a workers compensation exemption, Contractor shall complete an Independent Contractor Certification Statement on a form provided by the City.
 - e. Contractor represents and warrants that all subcontractors shall also meet these independent contractor standards.
 - f. Contractor certifies that it is customarily engaged in an independently established business because at least three of the following requirements are met:
 - i. Contractor maintains a business location that is separate from the business or work location of the person for whom the Work is provided; or that is in a portion of the person's residence and that portion is used primarily for the business.
 - ii. Contractor bears the risk of loss related to the business or the provision of Work as shown by factors such as:
 - (a) The person enters into fixed-price contracts;
 - (b) The person is required to correct defective work;
 - (c) The person warrants the Work provided; or
 - (d) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.
 - iii. Contractor provides contracted work for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar work.
 - iv. Contractor makes a significant investment in the business, through means such as:
 - (a) Purchasing tools or equipment necessary to perform the work;
 - (b) Paying for the premises or facilities where the work is provided; or
 - (c) Paying for licenses, certificates or specialized training required to perform the work.
 - v. Contractor has the authority to hire other persons to provide or to assist in providing the work and has the authority to fire those persons.

- g. Contractor is not eligible for any federal Social Security, unemployment insurance, state Public Employees' Retirement System, or workers' compensation benefits from compensation or payments to Contractor under this contract.
 - h. If any action is taken by a person or enforcement agency relating to the independent contractor status of Contractor or Contractor's subcontractors in connection with this contract, Contractor shall reimburse, defend, hold harmless and indemnify the City of Gresham, its elected and appointed officials, officers, employees, volunteers and agents from any actual or threatened action, claim, judgment, fine, penalty, or order to pay. Contractor shall pay any additional costs incurred by the City in defending such action or incurred as a result of such action. This indemnification is in addition to any indemnification otherwise in this agreement.
- 5. Subcontracts and Assignment.** Contractor shall not subcontract any of the Work required by this contract, or assign or transfer any of its interest in this contract, without the prior written consent of the City. Notwithstanding approval of a subcontractor, Contractor shall remain obligated for full performance of the Contract and the City shall incur no obligation other than its obligations to contractor hereunder. Contractor agrees that if subcontractors are employed in the performance of this contract, Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.
- 6. No Third Party Beneficiaries.** There are no third party beneficiaries to this contract. Enforcement of this contract is reserved to the City and Contractor, unless otherwise stated.
- 7. Successors in Interest.** The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns, if any.
- 8. Early Termination**
- a. The City may terminate this Contract for convenience, at any time for any reason deemed appropriate in its sole discretion, upon ten (10) calendar days written notice to Contractor.
 - b. The City and Contractor, by mutual written agreement, may terminate this Contract at any time.
 - c. Either the City or Contractor may terminate this Contract in the event of a material breach of the Contract by the other that is not cured. Material breach of contract includes but is not limited to: (i) refuses or fails to supply enough properly skilled workers or proper materials; (ii) disregards local, state, and federal laws, or (iii) fails to perform the Work as specified in the Contract. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the Party has not entirely cured the breach within ten (10) calendar days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
 - d. Notwithstanding section 8(c), City may suspend or terminate the Contract immediately by written notice to Contractor upon denial, suspension, revocation or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract, or upon the declaration of an emergency by the Manager.
- 9. Payment on Early Termination**
- a. If this contract is terminated under 8(a) or 8(b), the City shall pay the Contractor for the Work performed in accordance with the Contract prior to the termination date. No other costs or loss of anticipated profit shall be paid.
 - b. If this contract is terminated under 8(c), by the City due to a breach by the Contractor, the City is entitled to all remedies available at law or equity. In addition, Contractor shall pay the City all damages, costs, and sums incurred by the City as a result of the breach.
 - c. If this contract is terminated under 8(c), by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section. No other costs or loss of anticipated profit shall be paid.
 - d. In the event of early termination, Contractor's work product before the date of termination becomes property of the City.
- 10. Remedies**
- a. In the event of termination under 8(c) or (d), by the City due to a breach by the Contractor, then the City may complete the Work either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay to the City the amount of the reasonable excess.

- b. The remedies provided to the City under section 9 and 10 for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.
- c. In the event of breach of this Contract by the City, then the Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in section 9(c).

11. Access to Records. Contractor shall retain and maintain and the City (and its authorized representatives) shall have access to all books, documents, papers and records of Contractor which relate to this contract ("Records") for a period of six years after final payment, termination of the contract, full performance, or any longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to their Contract, whichever is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the City. This duty shall survive the termination or expiration of this contract.

12. Ownership of Work. For purposes of this Contract, "Work Product" means all services or work Contractor delivers or is required to deliver to City pursuant to this Contract and includes, but is not limited to research, reports, computer programs, manuals, drawings, recordings, photographs, artwork, and any data or information in any form, draft or final. All pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of Contractor, are not work product, and are and will remain the exclusive property of Contractor.

The Contractor and the City intend that the Work Product shall be deemed "work made for hire" of which the City shall be deemed the author. All Work Product produced by Contractor under this contract is the exclusive property of the City after payment is made in accordance with the terms of this contract. City shall have the right, in its discretion, to use all or any portion of such Work Product for future projects at no cost to City and with no payment to Contractor. If for any reason a Work Product is deemed not to be a "work made for hire," the Contractor hereby irrevocably assigns and transfers to the City all right, title, and interest in such work product, whether arising from copyright, patent, trademark, trade secret or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications.

Use of any work product of the Contractor by the City for any purpose other than the use intended by this contract is at the risk of the City. Use of any work product by Contractor is prohibited without the written consent of the City.

13. Compliance with Applicable Law. Contractor shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Services under this contract. Without limiting the foregoing, Contractor expressly agrees to comply with: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. A condition or clause required by law to be in this contract shall be considered included by these references.

14. Nondiscrimination. During the performance of this contract, Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- a. **Nondiscrimination:** Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, income, age, Limited English Proficiency, or disability, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in prohibited discrimination.
- b. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential

subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract relative to nondiscrimination on the grounds of race, color, national origin, sex, income, age, Limited English Proficiency, or disability.

- c. **Information and Reports:** Contractor shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *City of Gresham* or any state or federal agency to be pertinent to ascertain compliance with nondiscrimination, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information Contractor shall so certify to the *City of Gresham* or the any state or federal agency as appropriate, and shall set forth what efforts it has made to obtain the information.
- d. **Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the nondiscrimination provisions of this contract, the *City of Gresham* shall impose such contract sanctions as it or any state or federal agency may determine to be appropriate, including, but not limited to: (a) withholding of payments to Contractor under the contract until Contractor complies, and/or (b) cancellation, termination or suspension of the contract, in whole or in part.
- e. **Incorporation of Provisions:** Contractor shall include the provisions of paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.
- f. Contractor shall take such action with respect to any subcontractor procurement as the *City of Gresham* or any state or federal agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request the *City of Gresham* to enter into such litigation to protect the interests of the *City of Gresham*, and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

15. Equal Opportunity Policy. Contractor shall comply with the City of Gresham's Equal Opportunity Policy for Contractors. Contractor shall not discriminate against minorities, women, or emerging small business enterprises in the awarding of subcontracts.

16. Indemnity and Hold Harmless. To the fullest extent permitted by law, and except to the extent otherwise void or unenforceable under ORS 30.140, Contractor shall reimburse, defend, save, hold harmless, and indemnify the City, its elected officials, officers, agents, and employees from any and all threatened or actual claims, suits, or actions, damages, losses or expenses, including attorneys' fees, but only to the extent caused by, resulting from, arising out of, or relating to the intentional or negligent activities or omissions of Contractor, its officers, employees, subcontractors, agents, or anyone for whose acts Contractor is responsible. Contractor waives any and all statutory or common law rights of defense and indemnification by the City. Nothing in this paragraph requires the Contractor or its insurer to indemnify the City for claims of personal injury or property damage caused by the negligence of the City. This duty shall survive the expiration or termination of this contract. The City may, at any time at its election assume its own defense and settlement in the event that it determines that Contractor is not adequately defending the City's interests, or that an important governmental principle is at issue or that it is in the best interests of the City to do so.

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

18. Governing Law. The provisions of this contract shall be construed in accordance with the laws of the State of Oregon and ordinances of the City of Gresham, Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County, Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.

19. Contractor warranty and covenant concerning tax law compliance. Contractor represents and warrants that it has complied with the tax laws of this state or political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Contractor covenants to continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract and Contractor's failure to comply with the tax laws of this state or a political subdivision of this state before Contractor executed the public contract or during the term of the public contract is a default for which a contracting agency may terminate the

public contract and seek damages and other relief available under the terms of the public contract or under applicable law.

- 20. Severability.** 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 not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held invalid.
- 21. Survival.** Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement, including, but not limited to Ownership of Work and Indemnification, shall survive the termination or expiration of this Agreement, and shall, to the extent applicable, remain binding and in full force and effect.
- 22. Business License.** Contractor shall obtain a City of Gresham business license as required by GRC 9.05.020 prior to beginning work under this contract.
- 23. Non-appropriation Clause.** City certifies that sufficient funds have been appropriated to make payments required by this contract during the current fiscal year. Payment for Work performed after June 30 of any given year is subject to funds being appropriated by the Gresham City Council. If funds are not appropriated, the City may terminate this contact by notice to Contractor.
- 24. Cooperative Purchasing.** Contractor agrees to extend the terms, conditions and prices of the contract to other governmental agencies in accordance with ORS 279A.205, ORS 279A.210, ORS 279A.215, and ORS 279A.220. Governmental agencies seeking to participate in cooperative purchasing must enter into separate contracts with Contractor.
- 25. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. Transmission of a signed copy by facsimile or signed pdf by email by one party to another shall constitute a valid original signature. Any such transmission shall be followed by the mailing of a signed original by the transmitting party to the other Party.
- 26. Electronic Signatures.** The City and Contractor may conduct this transaction, including any Contract amendments, by electronic means, including the use of electronic signatures.
- 27. Merger Clause.** This contract and attached exhibits constitutes the entire agreement between the parties and supersedes all understandings, agreements, or representations, oral or written, not specified herein regarding this contract. No waiver, consent, modification or change of terms of this contract shall bind either party unless in writing and signed by both parties.