

**CITY OF LAKE OSWEGO STANDARD PUBLIC CONTRACT PROVISIONS FOR PERSONAL SERVICE / SERVICE CONTRACT
(1/19)**

The following City of Lake Oswego Standard Public Contract provisions are made a part of the Contract between City and Contractor by reference. Where the Lake Oswego Redevelopment Agency (LORA) is the contracting party, "City" shall refer to LORA.

CHANGES

This contract, including all attachments and exhibits annexed hereto, shall not be subject to modification or amendment except in writing, executed by both parties. This contract and any substantive changes to the scope of work or changes to the contract costs will not be effective until approved in writing by the City's Public Contracting Officer (PCO).

INDEPENDENT CONTRACTOR STATUS

The Contractor agrees and certifies that:

A. The Contractor is engaged as an independent contractor. Although the PCO reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, City cannot and will not control the means or manner of Contractor's performance, nor provide any tools or equipment for the performance of the Work, except as provided elsewhere in this Contract. Contractor is responsible for determining the appropriate means and manner of performing the Work.

B. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations.

C. The Contractor will not, on account of any payments made under this contract, be eligible for any benefit from federal social security, workers' compensation, unemployment insurance, or the Public Employee's Retirement System, except as a self-employed individual;

D. Contractor is not currently an employee of the federal government or the State of Oregon; and

E. The Contractor is not a contributing member of the Public Employee's Retirement System.

F. Contractor is not an "officer," "employee," or "agent" of the City, as those terms are used in ORS 30.265.

OTHER CONTRACTORS

The City may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with such other contractors and with any City employees concerned with such additional or related work, and shall coordinate its performance under this contract with such additional or related work. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by City employees.

SUBCONTRACTORS AND ASSIGNMENT

Except as set forth in Contractor's proposal or otherwise in this Contract, no subcontract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted without obtaining the prior written consent of the City, which City may withhold without cause. In addition to any other provisions PCO may require, Contractor shall include in

any permitted subcontract under this Contract a requirement that the subcontractor be bound by the following sections of this Contract as if the subcontractor were the Contractor: Independent Contractor Status; Other Contractors; Hours of Labor; Ownership of Work; Indemnity and Hold Harmless; Records; Attorney Fees; Compliance with Laws. PCO's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

This contract is not assignable by the Contractor, either whole or in part, unless Contractor has obtained the prior written consent of the City.

City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any enforceable benefit or right, whether directly, indirectly or otherwise, to third persons.

HOURS OF LABOR

For those employees of Contractor covered or subject to Oregon employment laws, the Contractor shall pay employees for overtime work performed under the public contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201 et seq.).

ERRORS

The Contractor shall perform such additional work as may be necessary to correct Contractor's errors in the work required under this contract without undue delays and without additional cost.

REPRESENTATIONS AND COVENANTS

A. Contractor's Representations. Contractor represents and covenants to City that:

(1) Contractor has the power and authority to enter into and perform this Contract,

(2) This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, and if Contractor is a partnership, corporation or other form of business entity, this contract was duly approved and executed pursuant to authority of the governing body or parties of the Contractor,

(3) Contractor is not in violation of any Oregon tax laws.

(4) Upon acceptance of each project, the Contractor warrants that it will carefully examine, as necessary, the site of the work contemplated and any plans, specifications, and contract documents pertaining to work, with the exception of unknown physical conditions at the work site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided herein..

(5) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work.

(6) Contractor will accomplish the work using a standard of performance and care that is currently accepted by other contractors engaged in similar work, under similar conditions and at the date the services are provided in the Portland metropolitan area (Standard of Care).

(7) Contractor's invoices shall describe all work performed with particularity, by whom it was performed, and

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shall itemize and explain all expenses for which reimbursement is claimed. Contractor shall send invoices to City's Project Manager.

(8) Contractor's completion shall not extinguish or prejudice City's right to enforce this Contract with respect to any breach of Contractor warranty or any default or defect in Contractor performance (defect is defined herein as services that do not conform to the Standard of Care (Section 6) in the performance of the Contract).

(9) Contractor has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of contractor's services, and in the performance of this contract no person having any such interest shall be employed.

B. Cumulative. The representations and covenants set forth in this section are in addition to, and not in lieu of, any other representations and covenants provided.

OWNERSHIP OF WORK

All work products of the Contractor, including background data, documentation and staff work that is preliminary to final reports, which result from this contract are the exclusive property of the City. If this contract is terminated by either party or by default, the City following payment as required by the Contract, in addition to any other rights provided by this contract, may require the Contractor to transfer and deliver such partially completed reports or other documentation that the Contractor has specifically developed or specifically acquired for the performance of this contract.

The reports and all material contained in the reports (graphics, photos, etc.) shall become the property of the City; the City may reproduce and distribute the reports, or any part thereof, in such form as the City desires. Any reuse of completed documents or use of partially completed documents without written verification or concurrence by Contractor for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to Contractor.

**ELECTRONIC CONTRACTING AND REPORTS;
PHOTOCOPY, ELECTRONIC, OR PDF VERSION OF CONTRACT**

This contract and any amendments may be executed by a party electronically by use of a digital signature issued by a city-recognized certification authority (such as Symantec Digital ID), pursuant to the Oregon Uniform Electronic Transactions Act, ORS Ch. 84.001 – 84.063. Upon execution of this contract electronically, the party consents to conduct further communications and transactions under this Contract by electronic means.

Unless otherwise stated in the Scope of Work or separately waived in writing, all final reports, including reports of phases of the project and of the entire project, shall be provided in both written and electronic format. Electronic format shall be in a format coordinated with the PCO and shall be fully compatible with such software programs specified by the PCO, .e.g. Microsoft Word, Microsoft Excel, Microsoft PowerPoint, Microsoft Access, Microsoft Publisher, Adobe Creative Suite, Adobe PDF, or such other software program as specified by the PCO.

A photocopy, electronically scanned (PDF), or electronic version of this Contract shall be deemed equivalent to an

originally signed Contract for all purposes, including arbitration or litigation.

INDEMNITY AND HOLD HARMLESS

The Contractor shall defend, indemnify, and hold the City, its officers, agents and employees, harmless against all liability, loss, or expenses, including reasonable attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property, but only to the proportionate extent caused by or resulting from any act, error, or omission (excepting professional services performed under this Contract) of an act sustained in connection with the performance of this contract or by conditions created thereby, or based upon Contractor's violation of any statute, ordinance or regulation.

With respect to professional services performed under this Contract, Contractor shall defend, indemnify, and hold the City, its officers, agents and employees, harmless against all liability, loss, or expenses, including reasonable attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property, but only to the proportionate extent caused by any negligent act, error, or omission of an act sustained in connection with the performance of this contract or by conditions created thereby, or based upon violation of any statute, ordinance or regulation.

RECORDS

Contractor shall have access to the books, documents, papers and records of the City as necessary for Contractor's performance of the work. The Contractor shall not disclose all or any part of such records to any other person, firm, corporation, association or other entity except as reasonably necessary to carry out the Work, without the consent of the Public Contracting Officer.

The Contractor agrees that the City and its authorized representatives shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcripts.

Contractor shall maintain all fiscal records directly relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that City's duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

PUBLICATION RIGHTS/RIGHTS IN DATA

To the extent the Work Product consists of material capable of publication, all publication rights in the product

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produced by the Contractor in connection with the work provided for under this contract, whether in preliminary draft or final form, shall be vested in the City.

The Contractor shall not publish any of the results of the work without the prior written permission of the City.

All original written material and other documentation, including background data, documentation, and staff work that is preliminary to final reports, originated and prepared for the City pursuant to this contract, shall become exclusively the property of the City. The ideas, concepts, know-how or techniques relating to data processing development during the course of this contract by the Contractor or City personnel, or jointly by the Contractor and City personnel, can be used by either party in any way it may deem appropriate.

Material already in the Contractor's possession, independently developed by the Contractor outside the scope of this contract or rightfully obtained by the Contractor from third parties, shall belong to the Contractor. However, the Contractor grants to the City a nonexclusive, irrevocable and royalty-free license to use such material to the extent such material is incorporated into the Work.

This contract shall not preclude the Contractor from developing materials that are competitive, irrespective of their similarity to materials which might be delivered to the City pursuant to this contract. The Contractor will not, however, use any written materials developed under this contract in developing materials for others, except as provided in this section.

CONFIDENTIALITY

No reports, information and/or data given to or prepared or assembled by the Contractor under this contract shall be made available to any individual or organization by the Contractor without the prior written approval of the City.

DISPUTE RESOLUTION / VENUE

Any dispute or claim that arises out of or that relates to this Contract, or to the interpretation or breach thereof, or to the existence, validity, or scope of this Contract or the arbitration Dispute Resolution procedure, shall be resolved as follows:

- Level 1: Within 15 days request for Level 1 dispute resolution, commence negotiation between the Contractor's Project Manager and the City's Project Manager. The City's Project Manager's last offer shall be final unless either party requests Level 2 dispute resolution within 15 days from commencement of Level 1 negotiation, unless both parties agree to extend the time to initiate Level 2.
- Level 2: Within 15 days request for Level 2 dispute resolution, commence negotiation between the Contractor's management representative with unlimited authority to settle the dispute and the City Manager. The City Manager's last offer shall be final unless either party requests Level 3 dispute resolution within 30 days from commencement of Level 2 negotiation, unless both parties agree to extend the time to initiate Level 3 Mediation.
- Level 3: Mediation in accordance with the mediation procedures of the Arbitration Service of Portland, Inc. (www.arbsevice.com), or such other procedures as the parties agree. The mediator shall be selected by the parties, either upon mutual agreement within 15 days written notice by one party to the other requesting mediation, or if the parties are not able to

agree upon a mediator within said period, then in accordance with the "Appointment of Sole Arbitrator" of the Arbitration Service of Portland, except that the person shall be a mediator, not an arbitrator. If the parties are unable to resolve the dispute upon completion of mediation, the City Manager's last offer under Level 2 shall be final unless a Claim for arbitration is filed within 30 days of the completion of mediation,

- Level 4: Upon the filing of a Claim for Arbitration, Arbitration shall occur in accordance with the arbitration procedures of the Arbitration Service of Portland, Inc. (www.arbsevice.com), or such other procedures as the parties agree. The decision of the arbitrator(s) shall be final and may be entered as a judgment in the Clackamas County Circuit Court in accordance with Oregon law.

The Parties shall equally share in the cost of the mediator / arbitrator(s); each Party shall be responsible for its own costs and fees. The mediation / arbitration proceeding shall be held in Clackamas or Multnomah counties, as the mediator / arbitrator(s) shall select, unless the parties otherwise agree.

SEVERABILITY

The parties agree that 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 to be invalid.

COMPLIANCE WITH LAWS

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon and ordinances of the City of Lake Oswego, Oregon.

The Contractor shall comply with all federal, state and local laws and ordinances, applicable to public contracts relating to Contractor's obligations and performance, and to the work to be done under this contract.

The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, gender identity, marital status, age, medical condition, or disability.

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.

INTEGRATION

This contract represents the entire and integrated agreement between the Contractor and the City, and supersedes all prior negotiations, representations or agreements, either written or oral.