



## Municipal Building Commission

### Contract for Professional Services

(Over \$175,000 - Non-Grant Funded)

**City Contract Number (Assigned by the City Contract Management Office):**

This Contract is made between the Municipal Building Commission, a political subdivision of the State of Minnesota and component unit of the City of Minneapolis, referred to as the "MBC", and \_\_\_\_\_, ("Consultant").

In consideration of the following terms, conditions and mutual promises, the parties hereby agree as follows:

#### **I. Scope of Service**

Consultant agrees to perform the following services for the MBC:

Include a detailed description of services/deliverables expected under this contract.

Services to be provided per the attached Request for Proposal, as modified by the attached proposal from the Consultant. If applicable, a project schedule is attached as Attachment A.

#### **II. Compensation**

Consultant shall be compensated as per the following fee arrangement:

Total compensation under this Contract shall not exceed \_\_\_\_\_.

A. **Invoices:** Consultant shall submit itemized invoices for services rendered. The MBC is under no obligation to honor or pay any invoices submitted more than 120 days after the Termination Date indicated in Section III of the Contract.

B. **Travel Expense Reimbursement:** Reimbursable expenses shall be paid upon submission of itemized invoices to the MBC Department Contract Manager designated herein and shall be limited to the following:

The MBC agrees to pay only for reimbursable expenses that are reasonably and

necessarily incurred and as set forth above. The total amount for compensation and reimbursable expenses shall not exceed the amount specified under the Compensation section above. All applicable travel-related expenses will require prior approval from the MBC Department Contract Manager designated herein. Consultant will only be reimbursed for the types of travel expenses that are allowed for travelling by City employees and for an amount that does not exceed the maximum reimbursements available to City employees. All travel must be conducted in accordance with the *City's Consultant Travel Reimbursement Conditions* which can be found at: <http://citytalk/wcm1/groups/public/@finance/documents/webcontent/wcms1p-096175.pdf> . Also, if applicable and at the MBC's option, the MBC will reimburse the consultant for mileage using the IRS "deductible" rates rather than paying the consultant's costs for a rental vehicle.

### **III. Effective Date and Termination Date**

This Contract shall be in full force and effect from \_\_\_\_\_ through \_\_\_\_\_ unless terminated earlier through the paragraph entitled Termination (under General terms and conditions) or unless extended by the MBC Department Head signing this contract.

### **IV. Notices**

Communication and details concerning this contract shall be directed to the following contract representatives:

**CONSULTANT** *(include the complete mailing address here):*

Phone:

Email:

**MBC** *(include the complete mailing address here):*

**Erin Delaney, Department Head**

Municipal Building Commission

350 South Fifth Street, Room 105

Minneapolis, MN 55415

Phone: (612) 596-9517

Email: Erin.Delaney@municipalbuilding.org

**Contract Manager**

Phone

Email

**V. Terms and Conditions**

This Contract is subject to and incorporates all the terms and conditions set forth in the General Conditions attached hereto.

**VI. Closing**

IN WITNESS WHEREOF, said Consultant and said MBC have caused this Contract to be executed in their behalf respectively by their proper officers as follows:

SAMPLE

**MBC BOARD AUTHORIZATION**

MUNICIPAL BUILDING COMMISSION  
STATE OF MINNESOTA

Reviewed by the County Attorney's Office

\_\_\_\_\_

Date: \_\_\_\_\_

Reviewed by the City of Minneapolis  
Procurement Office

\_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Chair of Its Board

Date: \_\_\_\_\_

By: \_\_\_\_\_

Director

Date: \_\_\_\_\_

**CONSULTANT**

CONSULTANT warrants that the person who executed this Agreement is authorized to do so on behalf of CONSULTANT as required by applicable articles, bylaws, resolutions or ordinances.\*

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Title: \_\_\_\_\_

Fed ID #: \_\_\_\_\_

Date: \_\_\_\_\_

\*CONSULTANT shall submit applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time CONSULTANT returns the Agreement to the MBC. Documentation is not required for a sole proprietorship.

# **MBC General Conditions for Professional Services Contracts Over \$175,000**

(Revised January 30, 2019)

The General Conditions are terms and conditions that the Municipal Building Commission ("MBC") expects all of its Consultants to meet. The Consultant agrees to be bound by these requirements unless otherwise noted in the Proposal. The Consultant may suggest alternative language for up to three (3) of the numbered items at the time it submits its response to this RFP. Some negotiation is possible to accommodate the Consultant's suggestions, but only if the consultant submits at the time of the proposal.

## **1. MBC's Rights**

The MBC 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 Consultant 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 Consultant. Among the federal, state and city statutes and ordinances to which the Consultant 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 Consultant shall have submitted and had an "affirmative action plan" approved by the City of Minneapolis ("City") prior to entering into a Contract.

## **3. Insurance**

Insurance secured by the Consultant shall be issued by insurance companies acceptable to the MBC 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 MBC shall not relieve, limit or decrease the liability of the Consultant. Any policy deductibles or retention shall be the responsibility of the

Consultant. The Consultant shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The MBC does not represent that the insurance requirements are sufficient to protect the Consultant'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 Consultant shall require any of its subcontractors, if sub-contracting is allowable under this Contract, to comply with these provisions, or the Consultant will assume full liability of the subcontractors.

The Consultant 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 MBC 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 Consultant or its subcontractors and 2) the negligence or failure to render a professional service by the Consultant 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 Consultant, its agents or employees. 2) Breach of the MBC'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. **Indemnity and Hold Harmless**

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

The MBC will defend, indemnify and hold harmless the Consultant 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 MBC by reason of the failure of the MBC to perform its obligations under this Contract. The provisions of the Minnesota Statutes, Chapter 466 shall apply to any tort claims brought against the MBC 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 Consultant shall provide written notice to the MBC and obtain the MBC's authorization to sub-contract any work or services to be provided to the MBC pursuant to this Contract. As required by Minnesota Statutes, Section 471.425, the Consultant shall pay all subcontractors for subcontractor's undisputed, completed work, within ten (10) days after the Consultant has received payment from the MBC.

6. **Assignment or Transfer of Interest**

The Consultant 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 MBC. The Consultant shall not subcontract any services under this Contract without prior written approval of the MBC Department Contract Manager designated herein.

7. **General Compliance**

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

8. **Performance Monitoring**

The MBC will monitor the performance of the Consultant against goals and performance standards required herein. Substandard performance as determined by the MBC will constitute non-compliance with this Contract. If action to correct such

substandard performance is not taken by the Consultant within a reasonable period of time to cure such substantial performance after being notified by the MBC, Contract termination procedures will be initiated. All work submitted by Consultant shall be subject to the approval and acceptance by the MBC Department Contract Manager designated herein. The MBC shall review each portion of the work when certified as complete and submitted by the Consultant and shall inform the Consultant of any apparent deficiencies, defects, or incomplete work, at any stage of the project.

**9. Prior Uncured Defaults**

The MBC may decline to contract with persons or entities that have defaulted under a previous contract or agreement with the City, Hennepin County, or MBC and have failed to cure the default.

**10. Independent Consultant**

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 Consultant shall at all times remain an independent Consultant with respect to the work and/or services to be performed under this Contract. Any and all employees of Consultant or other persons engaged in the performance of any work or services required by Consultant under this Contract shall be considered employees or subcontractors of the Consultant only and not of the MBC; 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 Consultant.

**11. Accounting Standards**

The Consultant 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 Consultant 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 Consultant 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 Consultant and any of the Consultant's sub-consultants 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 Consultant must immediately report to the MBC any requests from third parties for information relating to this Contract. The MBC agrees to promptly respond to inquiries from the Consultant concerning data requests. The Consultant agrees to hold the MBC, its officers, and employees harmless from any claims resulting from the Consultant'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 MBC. At that time, the names of the responders become public data. All other data is private or non-public until the MBC has completed negotiating the Contract with the selected Consultant(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 Consultant payroll and expense records with respect to any matters covered by this Contract shall be made available to the MBC 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 MBC deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

**15. Living Wage Ordinance**

The Consultant 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 MBC contract for services valued at \$100,000 or more or any MBC financial assistance or subsidy valued at \$100,000 or more will be subject to the Ordinance's requirement that the Consultant 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 Consultant.

**17. Conflict and Priority**

In the event that a conflict is found between provisions in this Contract, the Consultant's Proposal or the MBC'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 Consultant is allowable and approved for this Contract, then Consultant 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 MBC and the Consultant are required to comply with the City's Code of Ethics. Chapter 15 of the Code of Ordinances requires MBC officials and the Consultant to avoid any situation that may give rise to a "conflict of interest." A "conflict of interest" will arise if Consultant represents any other party or other client whose interests are adverse to the interests of the MBC.

As it applies to the Consultant, the City's Code of Ethics will also apply to the Consultant in its role as an "interested person" since Consultant 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 MBC may cancel this Contract for any reason without cause upon thirty (30) days' written notice. Both the MBC and the Consultant 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 MBC shall pay Consultant all compensation earned to the date of termination. If the termination shall be for breach of this Contract by Consultant, the MBC shall pay Consultant all compensation earned prior to the date of termination minus any damages and costs incurred by the MBC 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 Consultant under this Contract shall, at the option of the MBC, become the property of the MBC, and the Consultant 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 Consultant shall not be relieved of liability to the MBC for damages sustained by the MBC as a result of any breach of this Contract by the Consultant. The MBC may, in such event, withhold payments due to the Consultant for the purpose of set-off until such time as the exact amount of damages due to the MBC is determined. The rights or remedies provided for herein shall not limit the MBC, in case of any default by the Consultant, from asserting any other right or remedy allowed by law, equity, or by statute. The Consultant has not waived any rights or defenses in seeking any amounts withheld by the MBC or any damages due the Consultant.

## **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 MBC upon the MBC's payment for and final approval of the final report or upon payment and request by the MBC at any time before then. The MBC 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 Consultant.

## **23. Intellectual Property**

All Work produced by the Consultant under this Contract is classified as "work for hire" and upon payment by the MBC to the Consultant will be the exclusive property of the MBC and will be surrendered to the MBC 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 Consultant may retain a copy of the work for its files in order to engage in future consultation with the MBC and to satisfy professional records retention standards. The Consultant 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 Consultant 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 Consultant's and subcontractor's responsibility to review and understand the requirements and applicability of this ordinance.

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

The MBC owns all Data Sets defined as statistical or factual information: (a) contained in structural data sets; and (b) regularly created or maintained by or on behalf of the MBC, City or City department which supports or contributes to the delivery of services, programs, and functions. The MBC shall not only retain ownership of all MBC Data Sets, but also all information or data created through the MBC's use of the software and /or software applications licensed by the Consultant (or any subcontractor of sub-consultant of the Consultant) to the MBC.

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

The MBC shall have the right to access all data, regardless of which party created the content and for whatever purpose it was created. The Consultant shall provide bulk extracts that meet the public release criteria for use in and within an open data solution. The Consultant shall permit and allow free access to MBC 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. Audit Requirements for Cloud-Based Storage of MBC Data**

If the Consultant's services include the storage of MBC data using a cloud based solution, then the Consultant agrees to secure the data as though it were "private data" as defined in Minnesota Statutes, Chapter 13. The Consultant shall provide the MBC 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 Consultant agrees to provide a .pdf copy to the MBC's Contract Manager, upon the Consultant's receipt of the audit results.

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

Consultant must comply with the Small & Underutilized Business Program (SUBP), as detailed in Chapter 423 of the Minneapolis Code of Ordinances. The SUBP Ordinance applies to any contract for the provision of goods and services in excess of one hundred and seventy five thousand dollars (\$175,000).

## **28. Miscellaneous Provisions**

1. **Successors and Assigns** – This Contract shall be binding upon and inure to the benefit of the successors and assigns of the MBC and of the Consultant.
2. **Severability** – If any provision of this Contract is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Contract shall be construed and enforced as if such invalid or unenforceable provision had not been included.
3. **No Partnership or Joint Venture** – Neither the MBC nor the Consultant is an agent, partner, or joint venture of the other for any purpose or has any authority to bind the other.
4. **No Third-Party Beneficiaries** – This Contract does not create any third party beneficiary rights in any individual or entity that is not a party to this Contract.
5. **Waiver** – Failure to enforce any provision of this Contract does not affect the rights of the parties to enforce such provision in another circumstance. Neither does it affect the rights of the parties to enforce any other provision of this Contract at any time.
6. **Amendments** – This Contract may only be modified or changed by written amendment signed by authorized representatives of the MBC and the Consultant.
7. **Entirety of Contract** – This Contract and the Attachments/Exhibits thereto, constitute the entire and exclusive Contract of the parties.