

PART II

STANDARD TERMS AND CONDITIONS

Sec. 1. Indemnification: Definitions

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

a. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

b. **Contractor's Agents** means Contractor's officers, employees, subconsultants, subcontractors, successors, assigns, invitees, and other agents.

c. **City** means City and its agents, officials, officers and employees.

B. Contractor's obligations under this Paragraph with respect to indemnification for acts or omissions, including negligence, of City, shall be limited to the coverage and limits of insurance that Contractor is required to procure and maintain under this Contract. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price.

C. Contractor shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Contractor or Contractor's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Contractor is not obligated under this Section to indemnify City for the sole negligence of City.

D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Contract.

E. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's

rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 2. Indemnification for Professional Negligence.

If this contract is for professional services, Contractor shall indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any negligent acts or omissions in connection with this Contract, caused by Contractor, its employees, agents, subcontractors, or caused by others for whom Contractor is liable, in the performance of professional services under this Contract. Contractor is not obligated under this section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees.

Sec. 3. Independent Contractor.

Contractor is an independent contractor and is not City's agent. Contractor has no authority to take any action or execute any documents on behalf of City.

Sec. 4. Insurance.

A. Contractor shall procure and maintain in effect throughout the duration of this Contract insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Contract, Contractor shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Contractor's Self-Insured Retention.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
- c. No Contractual Liability Limitation Endorsement.
- d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent.

2. If applicable, Workers' Compensation Insurance, as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:

- \$500,000 disease-policy limit
- \$100,000 disease-each employee

3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 written on an "occurrence" basis, covering owned, hired, and non-owned automobiles. If the Contractor owns vehicles, coverage shall be provided on an "any auto" basis. If the Contractor does not own any vehicles, coverage shall be provided on a "hired autos" and "nonowned autos" basis. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by Contractor.

4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.

B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. Contractor shall provide to City at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. All insurance coverage must be written by companies that have an A.M. Best's rating of Professional Service Contract Part II 061218

"A-V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.

D. Contractor's failure to maintain the required insurance coverage will not relieve Contractor of its contractual obligation to indemnify the City pursuant to Sections 1 and 2. If the coverage afforded is cancelled or changed or its renewal is refused, Contractor shall give at least thirty (30) days prior written notice to City. In the event of Contractor's failure to maintain the required insurance in effect, City may order Contractor to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.

E. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 5. Governing Law.

This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Contractor: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum *non conveniens* as an objection to the location of any litigation.

Sec. 6. Compliance with Laws.

Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this contract.

Sec. 7. Termination for Convenience.

A. City may, at any time upon ten (10) days notice to Contractor specifying the effective date of termination, terminate this Contract, in whole or in part. If this Contract is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Contractor shall prepare an accounting of the services performed and

money spent by Contractor up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

B. If this Contract is terminated prior to Contractor's completion of services, all work or materials prepared or obtained by Contractor pursuant to this contract shall become City's property.

C. If this Contract is terminated prior to Contractor's completion of the services to be performed hereunder, Contractor shall return to City any sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the Contract. Contractor shall prepare an accounting of the services performed and money spent by Contractor up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

Sec. 8. Default and Remedies.

If Contractor shall be in default or breach of any provision of this Contract, City may terminate this contract, suspend City's performance, withhold payment or invoke any other legal or equitable remedy after giving Contractor notice and opportunity to correct such default or breach.

Sec. 9. Waiver.

Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Contractor to which the same may apply and, until complete performance by Contractor of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

Sec. 10. Modification.

Unless stated otherwise in this Contract, no provision of this Contract may be waived,

modified or amended except in writing signed by City.

Sec. 11. Headings; Construction of Contract.

The headings of each section of this Contract are for reference only. Unless the context of this Contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 12. Severability of Provisions.

Except as specifically provided in this Contract, all of the provisions of this Contract shall be severable. In the event that any provision of this Contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Contract shall be valid unless the court finds that the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 13. Records.

A. For purposes of this section:

1. "City" shall mean the City Auditor, the City's Internal Auditor, the city's Director of Civil Rights and Equal Opportunity Department, the City Manager, the City department administering this Contract and their delegates and agents.

2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

B. Contractor shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access to City of all Records upon ten (10) days written notice from the City.

C. The books, documents and records of Contractor in connection with this Contract shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Civil Rights and Equal Opportunity Department and the City department administering this Contract within ten (10) days after the written request is made.

Sec. 14. Affirmative Action.

If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmation action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

1. Execute and submit the City of Kansas City, Missouri CREO Affirmative Action Program Affidavit warranting that the Contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract.

2. Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Civil Rights and Equal Opportunity (CREO) prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the

Contract, unless a copy has already been submitted to CREO at any point within the previous two calendar years.

3. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

4. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's CREO Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 15. Tax Compliance.

Contractor shall provide proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a precondition to the City making the first payment under this contract or any contract renewal when the total contract amount exceeds \$160,000.00. If contractor performs work on a contract that is for a term longer than one (1) year, the contractor also shall submit to the City proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a condition

precedent to the City making final payment under the contract.

Sec. 16. Assignability and Subcontracting

(a) Assignability. Contractor shall not assign or transfer any part or all of Contractor's obligation or interest in this Contract without prior written approval of City. If Contractor shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit contractor from subcontracting as otherwise provided for herein.

(b) Subcontracting. Contractor shall not subcontract any part or all of Contractor's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Contractor shall subcontract any part of Contractor's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Contractor of any of its responsibilities under the Contract, and Contractor shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Contractor, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Contractor shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Contractor's services hereunder.

Sec. 17. Conflicts of Interest.

Contractor certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has

or will have an arrangement, concerning employment to perform services on behalf of Contractor in this Contract.

Sec. 18. Buy American Preference.

It is the policy of the City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

Sec. 19. Professional Services – Conflict of Interest Certification.

If this Contract is for professional services other than for medical doctors or appraisers, Contractor certifies that Contractor is not an expert witness for any party in litigation against the City at the time of the issuance of this Contract.

Sec. 20. Attorney Services – Conflict of Interest Certification.

If this Contract is for professional attorney services, Contractor certifies that Contractor and any of its individual attorneys, do not represent any party in litigation against the City at the time of the issuance of this Contract. Contractor's certification shall not apply to: representation in municipal court; attorneys employed by a not-for-profit legal services corporation; litigation where the City is named as a nominal party; litigation that has been filed with the agreement of the City and the party represented by the attorney; or where the City Council has otherwise waived this requirement. Nothing set forth in this section shall be deemed to supersede the Rules of Professional Conduct for Attorneys.

Sec. 21. Employee Eligibility Verification

If this Contract exceeds five thousand dollars(\$5,000.00), Contractor shall execute and submit an affidavit, in a form prescribed by City, affirming that Contractor does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U. S. C. § 1324a(h)(3). Contractor shall attach to the affidavit documentation

sufficient to establish Contractor's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Contractor may obtain additional information about E-Verify and enroll at www.dhs.gov/xprevprot/programs/gc_118522_1678150.shtm. For those Contractors enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Contractor will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Contractor shall submit the affidavit and attachments to the City prior to execution of the Contract, or at any point during the term of the Contract if requested by City.

Sec. 22. Quality Services Assurance Act. If this Contract exceeds \$160,000.00, Contractor certifies Contractor will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$13.75 per hour in compliance with the CITY's Quality Services Assurance Act, Section 3-66, Code of Ordinances or City has granted Contractor an exemption.

Sec. 23. Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and Contractor employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, Contractor certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.