

## **MASTER PROFESSIONAL SERVICES AGREEMENT**

### **TO CITY OF SAINT PAUL**

The City of Saint Paul has launched a new Procurement/Finance system. In order to facilitate a smooth contract process, we have developed the following form that we are requiring to be part of a Consultant's proposal to the City of Saint Paul. This form should be returned to the City of Saint Paul Project Manager in MS Word.

Please make sure to remind the vendor to sign up on the Supplier Portal, [www.stpaulbids.com](http://www.stpaulbids.com) if they have not already done so. They need to answer all questions and enter commodity codes in order for a contract to go through the system.

#### **City Project Manager Fills out the following information after receiving the proposal from the Vendor**

CITY PROJECT CONTACT NAME: Donald Cheney

CITY PROJECT CONTACT EMAIL: [Donald.Cheney@ci.stpaul.mn.us](mailto:Donald.Cheney@ci.stpaul.mn.us)

CITY OF SAINT PAUL VENDOR #: 1618

CITY OF SAINT PAUL SUPPLIER #:

CONTRACT START DATE: ~~August 31~~ September 27, 2018

## TERMS AND CONDITIONS

THIS MASTER PROFESSIONAL SERVICES AGREEMENT ("Agreement"), made and entered into on ~~August 31~~September 27, 2018 ("Effective Date") by and between the City of Saint Paul, Minnesota, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City," and the above named Contractor, hereinafter referred to as "Contractor." A Contractor is a party to a contract; and who contracts to do the work for another.

The City and Contractor, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, agree as follows:

Contractor agrees to provide the services comprised of tasks, deliverables, and time lines described in this Agreement.

### **1. Time For Completion.**

The services rendered by Contractor shall be commenced upon execution of the applicable Statement of Work issued under this Agreement and notification by the City to proceed and will be completed in accordance with the schedule mutually agreed upon with the City.

Contractor shall not proceed with any task without specific authorization from the Project Manager designated by the City. No claim for services or products provided by the Contractor not specifically provided for in this contract, or not specifically agreed to in advance will be honored by Saint Paul.

In the event that there are delays caused by actions of the City or which may be reasonably requested by the Contractor which can change the completion date, Contractor shall request an extension of time for completion of the project. The Project Manager will review the request and may grant to the Contractor such extensions of contract time as may be reasonable.

### **2. Project Management.**

The City requires the Contractor to assign specific individuals as principal project members and to assure that the major work and coordination will remain the responsibility of these individuals during the term of the Agreement. Removal of any principal project member without replacement by equally qualified individuals or without the prior written approval of the City is grounds for termination of the Agreement by the City.

The City has designated the individual on Page 1, as the Project Manager for this Agreement, and the individual to whom all communications pertaining to the Agreement shall be addressed. The Project Manager shall have the authority to transmit instructions, receive information, and interpret and define the City's policy and decisions pertinent to the work covered by this Agreement.

### **3. Billings and Payment.**

That for Contractor's faithful performance of this Agreement, the City hereby agrees to compensate Contractor in the amount(s) and according to the applicable Statement of Work.

The amounts herein shall fully compensate Contractor for all work and associated costs. The City will honor no claim for services and/or costs provided by the Contractor not specifically provided for in this Agreement. Total costs for the project shall not exceed the amount referenced in the applicable Statement of Work.

Contractor shall submit invoices to the City department making the purchase clearly itemizing all goods and/or services provided.

Contractor shall submit an itemized invoice monthly or after services are complete. Upon receipt of the invoice and verification of the charges by the Project Manager, the City shall make payment to Contractor within thirty (35) days. The City of Saint Paul will make payment in accordance with Chapter 471.425. Such payment may be made using a pay voucher, purchase order, or authorized procurement card, or department shall notify Contractor of any problems, omissions, or defects in the goods and/or services received.

#### **4. City Responsibilities**

The City agrees to provide Contractor with access to any information from City documents, staff, and other sources needed by Contractor to complete the work described herein.

#### **5. Amendment or Changes to Agreement.**

A. City or Contractor may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes and method of compensation must be authorized in writing in advance by the City.

B. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.

C. Modifications or additional schedules shall not be construed to adversely affect vested rights or causes of action which have accrued prior to the effective date of such amendment, modification, or supplement. The term "this Agreement" as used herein shall be deemed to include any future amendments, modifications, and additional schedules made in accordance herewith.

#### **6. Notices.**

Except as otherwise stated in this Agreement, any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed to the individuals and addresses listed above.

#### **7. Survival of Obligations.**

A. The respective obligations of the City and Contractor under these terms and conditions, which by their nature would continue beyond the termination, cancellation, or expiration hereof, shall survive termination, cancellation or expiration hereof.

B. If a court or governmental agency with proper jurisdiction determines that this Agreement, or a provision herein is unlawful, this Agreement or that provision, shall terminate. If a provision is so terminated but the parties legally, commercially, and practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

## **8. Records, Dissemination of Information, Ownership.**

(i) For purposes of this Agreement, the following words and phrases shall have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

“Work product” shall mean any report, recommendation, paper, presentation, drawing, demonstration, or other materials, whether in written, electronic, or other format that results from Contractor’s services under this Agreement.

“Supporting documentation” shall mean any surveys, questionnaires, notes, research, papers, analyses, whether in written, electronic, or in other format and other evidences used to generate any and all work performed and work products generated under this Agreement.

“Business records” shall mean any books, documents, papers, account records and other evidences, whether written, electronic, or in other forma, belonging to Contractor and pertaining to work performed under this Agreement.

(ii) Except as may be expressly stated in this Agreement (including the applicable Statement of Work attached hereto), the parties agree that there are no materials or documents being created for City by Contractor under this Agreement for which ownership of the intellectual property will be transferred to the City. All materials and documents which were developed or prepared by Contractor for general use and which are not the copyright of any other party or publicly available, including educational materials, the Software and any other computer applications, shall continue to be the property of Contractor. The foregoing does not restrict the City’s right to use such deliverables or materials for internal purposes as further described in the Statement of Work.

(iii) The Contractor agrees not to release, transmit, or otherwise disseminate information associated with or generated as a result of the work performed under this Agreement without prior knowledge and written consent of the City.

(iv) In the event of termination, all documents finished or unfinished, and supporting documentation prepared by the Contractor under this Agreement, shall be delivered to the City by Contractor by the termination date and there shall be no further obligation of the City to Contractor except for payment of amounts due and owing for work performed and expenses incurred to the date and time of termination.

(v) The Contractor agrees to maintain all business records in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during this Agreement period and for six (6) years from the date of the final payment under the contract for audit or inspection by the City, the Auditor of the State of Minnesota, or other duly authorized representative.

(vi) The Contractor agrees to abide strictly by Chapter 13, Minnesota Government Data Practice Act, and in particular Minn. Stat. §§ 13.05, subd. 6 and 11; and 13.37, subd. 1 (b) and Minn. Stat. §§ 138.17 and 15.17. All of the data created, collected, received, stored, used, maintained, or disseminated by the Contractor in performing functions under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act and Contractor must comply with those requirements as if it were a governmental entity. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota state laws, state law shall control.

### **9. Human Rights/Affirmative Action/Economic Opportunity.**

Contractors must comply with the City of Saint Paul's Human Rights Department's Affirmative Action Requirements in Employment pursuant to Section 183.04 of the Saint Paul Legislative Code, the Rules Governing Affirmative Requirements in Employment, and Chapter A-17 of the Saint Paul Administrative Code governing racial harassment. The Contractor agrees to comply with all federal, state and local laws, resolutions, ordinances, rules, regulations and executive orders pertaining to unlawful discrimination on account of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same.

### **10. Affirmative Action Contract Specifications.**

Every contractor or subcontractor whose total accumulated contract awards from the City of Saint Paul over the preceding twelve months have met or exceeded \$50,000 must complete and submit to the Department an Affirmative Action Program Registration form along with a \$75 registration fee.

### **11. Compliance With Applicable Law.**

The Contractor agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations and standards established by any agency of such governmental units, insofar as they relate to the Contractor's performance of the provisions of this Agreement. It shall be the obligation of the Contractor to apply for, pay for and obtain all permits and/or licenses required.

### **12. Conflict of Interest.**

Contractor's acceptance of this agreement indicates compliance with Chapter 24.03, City of Saint Paul Administrative Code: "Except as permitted by law, no city official or employee shall

be a party to or have a direct financial interest in any sale, lease, or contract with the City. The contractor also affirms that to the best of the Contractor's knowledge, their involvement in this contract does not result in a conflict of interest with any part or entity which may be affected by the terms of this contract. The Contractor agrees that should any conflict or potential conflict of interest become known to the contractor, they will immediately notify the Purchasing Systems Manager of the situation so that a determination can be made about Contractor's ability to continue performing services under this contract.

### **13. Hold Harmless.**

The Contractor shall indemnify, save and hold harmless, protect and defend the City of Saint Paul, its officers, agents, and employees from all third-party claims, actions, or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property, resulting from any act or omission by the contractor or any person employed by Contractor in carrying out the terms of this Agreement. This indemnity is only effective where (i) City has provided prompt notice of the claim, action or demand to Contractor, it being understood that the City may require reasonable time to assess the claim and the applicability of Contractor's indemnification obligations; (ii) City has not made any admissions of liability or settlement offers either prior to or after providing notice to Contractor of the applicable claim except with HARRIS's prior written consent, except to the extent required by applicable law, (iii) Contractor has sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement; (iv) City provides reasonable assistance to Contractor, at Contractor's expense throughout the action or proceeding, and (v) City may, at City's sole cost and expense, retain counsel of its own choosing who shall be permitted to attend settlement conferences and hearings or other court appearances and hearings (except where the court has specifically ordered otherwise) related to the proceeding.

### **14. Remedies and Liability.**

(a) Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, prior to the termination taking effect.

(b) The City and Contractor recognize that circumstances may arise entitling the City to damages for breach or other fault on the part of Contractor arising from this Agreement. The parties agree that in all such circumstances the City's remedies and Contractor's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.

(c) TO THE EXTENT PERMITTED BY LAW, EXCEPT FOR DAMAGES ARISING OUT OF (i) DAMAGE TO TANGIBLE PROPERTY (ii) INJURY OR DEATH TO PERSONS, OR (iii) INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BOTH PARTIES AGREE THAT THE AGGREGATE LIABILITY OF CONTRACTOR TO CITY FOR ALL CLAIMS, SUITS, ACTIONS AND PROCEEDINGS HOWSOEVER ARISING, DIRECTLY OR INDIRECTLY, UNDER OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, INCLUDING THOSE BASED ON BREACH OR RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, BREACH OF FIDUCIARY DUTY OR ANY INDEMNIFICATION OBLIGATIONS, SHALL NOT EXCEED, IN THE AGGREGATE, TWO (2) TIMES THE FEES PAID BY CITY TO CONTRACTOR PURSUANT TO THE

## RELEVANT STATEMENT OF WORK.

(d) IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIMS FOR CONSEQUENTIAL DAMAGES, INCIDENTAL DAMAGES, INDIRECT DAMAGES, SPECIAL DAMAGES, AGGRAVATED DAMAGES, LOSS OF REVENUE, LOSS OF PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY EITHER UNDER OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER BASED ON BREACH OR RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES.

### 15. Assignment.

The City and Contractor each binds itself and its successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement; and neither the City nor the Contractor will assign or transfer their interest in this Agreement without the written consent of the other, except that Contractor may assign to a successor entity in the event of its dissolution, acquisition, sale of substantially all of its assets, merger or other change in legal status. Contractor shall provide notice within ninety (90) days of any such assignment.

### 16. Term and Termination.

The term of this Agreement shall commence on the Effective Date, and shall continue for one (1) year, unless this Agreement is terminated as provided in this Section 16, or renewed as provided in section 17. Upon the completion of any statement of work covered by this Agreement, after the software/add-on/enhancement/fix is live in the Saint Paul Regional Water Services system, and upon making the final milestone payment of the applicable statement of work, the terms and conditions of this Agreement will expire. At that time, the software upgrade/add-on/enhancement/fix will be effectively integrated into the CIS Infinity software, and the terms and conditions of the License Agreement and the Support and Maintenance Agreement of June 28, 2008 will control.

#### A. With Cause.

The City reserves the right to terminate this Agreement if the Contractor violates any of the terms or does not fulfill, in a timely and proper manner, its obligations under this Agreement as determined by the City and that breach is not cured within thirty (30) days of receipt of written notice from the City to that effect;. In the event that the City exercises its right to withhold payment or terminate under this Section, it shall submit written notice to the Contractor, specifying the extent of such withholding or termination under this Section, the reasons therefore, and the date upon which such withholding or termination becomes effective. Upon receipt of such notice, the Contractor shall take all actions necessary to discontinue further commitments of funds to the extent that they relate to the terminated portions of this Agreement.

B. In the event of termination, the City will pay Contractor for all services and/or products, actually, timely, and faithfully rendered up to the receipt of the notice of termination and thereafter until the date of termination. The Contractor will deliver all work products and

supporting documentation developed up to the time of termination prior to the City rendering final payment for service.

**17. Renewal.**

This Agreement may be renewed at the expiration of the initial term at the request of the City. The Agreement may be renewed for up to three (3) additional one (1) year periods. Unless otherwise agreed to by the parties, or as may required by law, any renewal shall be based on the same terms and conditions as the initial term and shall be accompanied by a new statement of work reflecting the obligations of the parties.

**18. Amendments or Changes.**

Any alteration, variation, modification or waiver of the provisions of the specifications that may have occurred during the bidding process or amendments to this Agreement shall be valid only when reduced to writing and duly signed by the Contractor and the City.

**19. Interpretation of Agreement, Venue.**

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota.

**20. Independent Contractor.**

It is agreed by the parties, that at all times and for all purposes, within the scope of the Agreement resulting from this solicitation, the relationship of the Contractor to the City is that of independent contractor and not that of employee. No statement contained in the specification or resulting Agreement shall be construed so as to find the Contractor an employee of the City, and Contractor shall be entitled to none of the rights, privileges, or benefits of Saint Paul employees.

**21. Waiver.**

The waiver by the City of any breach under the terms of this Agreement or the foregoing by the City of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of the City's right to any rights and/or remedies with respect to any subsequent breach or default of the terms of the contract. The rights and remedies of the City provided or referred to under the terms of the contract are cumulative and not mutually exclusive.

**22. Setoff.**

The City may withhold payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due the City from the Contractor is determined.

**23. Additions.**

During the contract period, the City reserves the right to request pricing for and add to the contract a limited number of like items to accommodate the need for any items that may have been inadvertently omitted from the lists included in this request document.

**24. Subcontracting.**

The Contractor agrees not to enter into any subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the City.

**25. Force Majeure.**

Neither the City nor the Contractor shall be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control, including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strikes and other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive.

**26. Entire Agreement.**

This Agreement shall constitute the entire agreement between the parties hereto with respect to the matters covered herein. No other understandings, agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Contractor by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

**27. Insurance.**

A. Contractor shall be required to carry insurance of the kind and in the amounts shown below for the life of the contract. Certificates for General Liability Insurance should state that the City of Saint Paul, its officials, employees, agents and representatives are Additional Insureds.

- 1. General or Business Liability Insurance
  - \$1,500,000 per occurrence
  - \$2,000,000 aggregate per project
  - \$2,000,000 products/completed operations total limit
  - \$1,500,000 personal injury and advertising

Policy must include an "all services, products, or completed operations" Endorsement when appropriate.

- 2. Automobile Insurance-(When Commercial vehicles are used in connection with a contract)

- a. Bodily Injury            \$750,000 per person \$1,000,000 per accident

- b. Property Damage not less than \$50,000 per accident Coverage shall include: hired, non-owned and owned auto

Automobile Insurance – When Personal vehicles are used in connection with a contract, the City is not required to be named as Additional Insured, but proof of insurance is required prior to commencement of activities. Contractor must provide City with Endorsements from insurance company.

- a. Bodily Injury \$30,000 per person \$60,000 per accident
- b. Property Damage \$20,000 per accident

Automobile Insurance – When Rental vehicles are used in connection with a contract, the Contractor shall either purchase insurance from the rental agency, or provide City with proof of insurance as stated above.

### 3. Worker's Compensation and Employer's Liability

#### a. Worker's Compensation per Minnesota Statutes

- b. Employer's Liability shall have minimum limits of \$500,000 per accident; \$500,000 per employee; \$500,000 per disease policy limit.

c. Contractors with 10 or fewer employees who do not have Worker's Compensation coverage are required to provide the City with a completed "Certificate of Compliance" (State of Minnesota form MN LIC 04) verifying their number of employees and the reason for their exemption.

### 4. Professional Liability Insurance is required when a contract is for service for which professional liability insurance is available for purchase.

- a. \$1,000,000 per occurrence
- b. \$2,000,000 aggregate

### 5. General Insurance Requirements

a. All policies shall be written on an occurrence basis or as acceptable to the City. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if company carries errors and omissions coverage.

b. The Contractor may not commence any work until Certificates of Insurance covering all of the insurance required for this project is approved and the Project manager has issued a notice to proceed. Insurance must remain in place for the duration of the original contract and any extension periods.

c. The City reserves the right to review Contractor's insurance policies at any time to verify that City requirements have been met; however, it is understood that the City may be required to enter into a Non-Disclosure Agreement to protect the confidentiality of such policies. d. Nothing

shall preclude the City from requiring Contractor to purchase and provide evidence of additional insurance if the scope of services change, if the amount of the contract is significantly increased, or if the exposure to the City or its citizens is deemed to have increased.

e. Satisfaction of policy limits required above for General Liability and Automobile Liability Insurance, may be met with the purchase of an umbrella or excess policy.

Any excess or umbrella policy shall be written on an occurrence basis, and if such policy is not written by the same insurance carrier, the proof of underlying policies shall be provided with any certificate of insurance.

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

**N. HARRIS COMPUTER CORPORATION**

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

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

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

**[INSERT ORGANIZATION FULL LEGAL NAME]**

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

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

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

**Schedule A**  
**Statement of Work**

*[Under Separate Cover]*