

**CITY OF RED WING
PROFESSIONAL AND TECHNICAL SERVICES MASTER CONTRACT**

This Contract is made this _____ day of (month) , (year) , between the City of Red Wing, 229 Tyler Rd. N, Red Wing, Minnesota, 55066 (hereinafter, the City), and _____ (insert name of contractor) of _____ (insert address of contractor) (hereinafter, the Contractor).

Recitals

1. The City is in need of **[ADD BRIEF NARRATIVE OF THE PURPOSE OF THE CONTRACT]**.
2. The Contractor represents that it is duly qualified and agrees to perform all services described in this master contract and performed under work order contracts to the satisfaction of the City.

Contract

1 Term of Contract

- 1.1 **Effective date.** **[SPELL OUT FULL DATE (e.g., April 1, 2016)]**, or the date this Contract is executed by the parties with all signatures obtained, whichever is later. **The Contractor must not begin work under this contract until this contract is fully executed and the Contractor has been notified by the City's Authorized Representative to begin the work.**
- 1.2 **Work Order Contracts:** The term of work under work order contracts issued under this master contract may not extend beyond the expiration date of this master contract.
- 1.3 **Expiration date.** **[SPELL OUT FULL DATE (e.g., March 31, 2016)]**.
- 1.4 **Survival of Terms.** The following clauses survive the expiration or cancellation of this contract: 8. Indemnification; 9. Audits; 10. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

2 Scope of Work

The Contractor, who is not a City employee, may be requested to perform any of the following services under individual work order contracts. **The Scope of Work for this master contract may include one or all of the following as described in Exhibit A.** A complete detailed description of required work will be furnished in each work order contract issued.

The Contractor understands that only the receipt of a fully executed work order contract authorizes the Contractor to begin work under this master contract. Any and all effort, expenses, or actions taken before the work order contract is fully executed is not authorized under Minnesota Statutes and is under taken at the sole responsibility and expense of the Contractor. **A sample work order contract is attached and incorporated into this master contract as Exhibit B.**

The Contractor understands that this master contract is not a guarantee of a work order contract. The City has determined that it may have need for the services under this master contract, but does not commit to spending any money with the Contractor.

- 2.2 **Level of Care.** The Contractor shall furnish the necessary qualified personnel to provide the duties outlined in Paragraph 2.1 above. The Contractor represents that it has access to the experience and capability necessary to and agrees to perform the duties with the reasonable skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the duties at the time when and the location in which the duties were performed.

3 Time

The Contractor must comply with all the time requirements described in work order contracts. In the performance of work order contracts, time is of the essence. The Contractor shall make all extension requests in writing, directed to the City's Authorized Representative and include the reason for the extension and length of the requested extension. The City shall not unreasonably withhold approval of requested extensions where the delay is not caused by the Contractor.

4 Consideration and Payment

4.1 **Consideration.** The City will pay for all services satisfactorily performed by the Contractor for all work order contracts issued under this master contract.

(A) **Compensation.** The hourly billing rates for services of the Contractor and the Contractor's consultants, if any, are set forth in Exhibit C. The rates shall be adjusted in accordance with the Contractor and the Contractor's consultants' normal review practices.

(B) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of any work order contract will be reimbursed in the same manner.

(C) **Total Obligation.** An initial payment of Zero Dollars (\$0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement.

4.2 Payment.

(A) **Invoices.** The City will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the City's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and no more frequently than monthly. At the end of each calendar year, the Contractor must submit all outstanding invoices by January 30th to receive compensation for services delivered in the previous calendar year.

(B) **Final Payment.** Final payment will be paid when the City's Authorized Representative determines that the Contractor has satisfactorily fulfilled all the terms of this contract.

5 Conditions of Payment

All services provided by the Contractor under this contract must be performed to the City's satisfaction, as determined at the sole discretion of the City's Authorized Representative and in accordance with all applicable federal, State, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the City to be unsatisfactory or performed in violation of federal, State, or local law.

6 Authorized Representatives

The City's Authorized Representative is [NAME, TITLE, ADDRESS, TELEPHONE NUMBER], or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this contract. If the services are satisfactory, the City's Authorized Representative will certify acceptance on each invoice submitted for payment.

The State's Project Manager will be identified in each work order contract.

The Contractor's Authorized Representative is [NAME, TITLE, ADDRESS, TELEPHONE NUMBER], or his/her successor. If the Contractor's Authorized Representative changes at any time during this contract, the Contractor must immediately notify the City.

The Contractor's Project Manager will be identified in each work order contract.

7 Assignment, Amendments, and Waiver

- 7.1 **Assignment.** The Contractor may neither assign nor transfer any rights or obligations under this master contract or any work order contract without the prior consent of the City and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this contract, or their successors in office.
- 7.2 **Amendments.** Any amendment to this master contract or work order contract that changes the scope or value, with the exception of a Change Order, must be in writing, signed by the Contractor, and will not be effective until it has been approved by the City Council.
- 7.3 **Change Order.** A Change Order to a work order contract must be approved by the City's Authorized Representative in writing, and requires a written change request by the Contractor. A Change Order may be used for the purposes of transferring budget amounts between line items or minor project adjustments that do not change the work order contract value, or other contract status activity. All other changes require a formal amendment as stated in paragraph 7.2 above.
- 7.4 **Waiver.** If the City fails to enforce any provision of this master contract or work order contract, that failure does not waive the provision or its right to enforce it.
- 7.5 **Contract Complete.** This master contract and any work order contract contain all negotiations and agreements between the City and the Contractor. No other understanding regarding this master contract or work order contract, whether written or oral, may be used to bind either party.

8 Indemnification

In the performance of this contract by Contractor, or Contractor's agents or employees, the contractor must indemnify, save, and hold harmless the City, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the City, to the extent caused by Contractor's:

- 1) Intentional, willful, or negligent acts or omissions; or
- 2) Actions that give rise to strict liability; or
- 3) Breach of contract or warranty.

The indemnification obligations of this section do not apply to the extent the claim or cause of action is related to the City's negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the City's failure to fulfill its obligation under this contract.

9 Audits

Under Minnesota Statute § 16C.05, subdivision 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this contract are subject to examination by the City and/or the City Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this contract.

10 Government Data Practices and Intellectual Property

- 10.1 **Government Data Practices.** The Contractor and City must comply with the Minnesota Government Data Practices Act (MGDPA), Minnesota Statute Ch. 13, as it applies to all data provided by the City under this contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this contract. The civil remedies of Minnesota Statute § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statute Ch. 13, by either the Contractor or the City.

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the City, and consult with the City's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law. City will reimburse Contractor as additional services under 7.2 or 7.3 for Contractor's reasonable expenses in complying with any MGDPA data request that is not a result of Contractor's

intentional, willful misconduct, or negligent acts or omissions.

10.2 ***Intellectual Property Rights.***

- (A) *Intellectual Property Rights.* The City owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this contract*. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. Works includes “Documents.” Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this contract. The Documents will be the exclusive property of the City and all such Documents must be immediately returned to the City by the Contractor upon completion or cancellation of this contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the City. The Contractor must, at the request of the City, execute all papers and perform all other acts necessary to transfer or record the City’s ownership interest in the Works and Documents.
- (B) *Intellectual Property Rights of Contractor.* Contractor retains title and interest in all of its standard details, plans, specifications and engineering computation documents (“Previously Created Works and Documents”), whether in written or electronic form, which have been incorporated into the Works and Documents, but which were developed by Contractor independent of this contract. Contractor issues to City a royalty-free, nonexclusive and irrevocable license to use the Previously Created Works and Documents.
- (C) *Obligations*
- (1) *Notification.* Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this contract, the Contractor will immediately give the City’s Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.
- (2) *Representation.* The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the City, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify; defend and hold harmless the City, at the Contractor’s expense, from any action or claim brought against the City to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor’s or the City’s opinion is likely to arise, the Contractor must, at the City’s discretion, either procure for the City the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the City will be in addition to and not exclusive of other remedies provided by law.

11 Insurance

Before commencing work with the City, Contractor must submit Certificates of Insurance acceptable to the City as evidence of the required insurance coverage requirements. An insurance certificate must be submitted with an effective policy period covering the duration of the project and must remain in effect throughout the project. The Contractor's policies shall contain a provision that coverage afforded under the policies shall not be cancelled without at least thirty (30) days' advanced written notice to the City. The Contractor's policy must indicate the cancellation endorsement, which must also be specified on the Certificate of Insurance. The Contractor's insurance shall be "primary and non-contributory" to any other valid and collectible insurance available to the City with respect to any claim arising out of Contractor's performance under this Contract. The following types of insurance are required with policy limits as indicated.

11.1 **Workers' Compensation Insurance.** Except as provided below, Contractor must provide Workers' Compensation Insurance for all its employees and in case any work is subcontracted, the Contractor will require the subcontractor to provide Workers' Compensation Insurance in accordance with the statutory requirements of the State of Minnesota, including Employer's Liability. Evidence of subcontractor insurance shall be filed with the Contractor. Minimum limits of Employer's Liability are as follows:

- \$500,000 - Injury by Disease per Each Employee
- \$500,000 - Injury by Each Accident
- \$500,000 - Disease Aggregate Limit.

If Minnesota Statutes section 176.041 exempts the Contractor from Workers' Compensation Insurance or if the Contractor has no employees in the State of Minnesota, the Contractor must provide a written statement, signed by the authorized signer of the Contract, stating the qualifying exemption that excludes the Contractor from Minnesota Workers' Compensation requirements. If during the course of the Contract, the Contractor becomes subject to the Workers' Compensation Insurance requirements, the Contractor must comply with the Workers' Compensation Insurance requirements included herein and provide the City with a certificate of insurance.

11.2 **Automobile Liability Insurance.** The Contractor shall maintain Automobile Liability Insurance to cover liability arising out of the ownership, operation, use or maintenance of all owned, hired and non-owned automobiles, and in case any work is subcontracted, the Contractor will require the subcontractor to maintain Automobile Liability Insurance. Evidence of subcontractor insurance shall be filed with the Contractor. The minimum limit of liability required is \$1,000,000 Per Occurrence – Combined Single Limit (Bodily Injury and Property Damage).

11.3 **Commercial General Liability Insurance.** The Contractor shall maintain Commercial General Liability Insurance protecting it from claims of damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the Contract. The City must be named as an Additional Insured. The Contractor agrees that the additional insured coverage will extend to claims arising out of the Contractor's ongoing operations for the City. Minimum limits of liability for this project are as follows:

- \$1,000,000 - Per Each Occurrence *
- \$2,000,000 - Annual General Aggregate
- \$2,000,000 - Annual Aggregate applying to Products/Completed Operations
- Additional Coverages: Premises and Operations Bodily Injury and Property Damage and Personal & Advertising Injury

(* Note: A combination of general liability and umbrella liability per occurrence would meet this requirement.)

If the Contractor provides an umbrella/excess policy, the City shall be endorsed as an additional insured on that policy in addition to the underlying Commercial General Liability policy. A statement shall be included on the Certificate of Insurance such as “Umbrella liability follows form to underlying coverage including Additional Insured provisions.”

11.4 **Professional Liability Insurance.** The Contractor shall maintain professional liability insurance covering the Contractor’s negligent acts, errors and omissions in its performance of services with policy limits of not less than \$1,000,000 per claim in the aggregate.

11.5 The City reserves the right to immediately terminate the Contract if the Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Contractor. All insurance policies must be open to inspection by the City, and copies of policies must be submitted to the City’s Authorized Representative upon written request.

12 **Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions.** Contractor certifies that neither it nor its principles is presently debarred or suspended by the State of Minnesota, or any of its departments, commissions, agencies, or political subdivisions. Contractor’s certification is a material representation upon which the contract award was based. Contractor shall provide immediate written notice to the City’s Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

13 **Publicity and Endorsement**

13.1 **Publicity.** Any publicity regarding the subject matter of this contract must identify the City as the sponsoring agency and must not be released without prior written approval from the City’s Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

13.2 **Endorsement.** The Contractor must not claim that the City endorses its products or services.

14 **Governing Law, Jurisdiction, and Venue**

Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings out of this contract, or its breach, must be in the appropriate State or federal court with competent jurisdiction in Goodhue County, Minnesota.

15 **Data Disclosure**

Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, to City personnel involved in the payment of City obligations. These identification numbers may be used in the enforcement of federal and State laws which could result in action requiring the Contractor to file State tax returns, pay delinquent State tax liabilities, if any, or pay other State liabilities.

16 **Subcontracts**

16.1 Contractor must require all subcontractor contracts to contain all appropriate terms and conditions of this Contract, as they apply to the subcontractor. The use of subcontractors does not relieve Contractor from performing and delivering the work stated in this Contract.

16.2 City's Authorized Representative must review, and accept for compliance with the terms of this Contract, all subcontractor contracts exceeding \$10,000.00 prior to the execution of any such subcontractor contract. City's Authorized Representative has the authority to reject any subcontractor contract that does not comply with the terms of this Contract.

16.3 A copy of any and all subcontractor contracts must be sent to the City's Authorized Representative after execution of the subcontractor contract and prior to work starting under the subcontractor contract.

17 Payment to Subcontractors

The Contractor agrees to pay all laborers employed and all subcontractors furnishing material to the Contractor in the performance of this Contract. In accordance with Minnesota Statutes section 471.425, subdivision 4a, the Contractor shall pay to each subcontractor, within (10) calendar days of the Contractor's receipt of payment from the City, the amount due for undisputed services provided by the subcontractor. If the Contractor does not make said payment to any subcontractor within the specified time, the Contractor shall pay interest to the subcontractor in the amount of one and one-half (1.5) percent per month, or any part of the month, on any undisputed amount not paid on time to the subcontractor, unless otherwise provided in Minnesota Statutes section 471.425, subdivision 4a.

18 Termination

18.1 *Termination by the City.* The City may cancel this contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

18.2 *Termination for Insufficient Funding.* The City may immediately terminate this contract if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to the Contractor. The City is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The City will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The City must provide the Contractor notice of the lack of funding within a reasonable time of the City's receiving that notice.

19 Nondiscrimination. The Contractor and any subcontractor, material supplier, or vendor shall not discriminate in the hiring of labor for the performance of any work under this Contract or any subcontract hereunder on the basis of race, creed, color, sex, or national origin; and shall not discriminate against any persons who are citizens of the United States or resident aliens who are qualified and available to perform the work on the Project. The Contractor and any subcontractor, material supplier, or vendor shall not in any manner discriminate against, or intimidate, or prevent the employment of any such person, or on being hired, prevent, or conspire to prevent, the person from performing work under this Contract or any subcontract hereunder on the basis of race, creed, color, sex, or national origin. Any violation of this paragraph shall be a misdemeanor; and this Contract may be canceled or terminated by the City, and all money due, or to become due, may be forfeited, for a second or any subsequent violation of the terms or conditions of this Contract.

20 No Waiver of Immunities. Nothing in this Contract shall be construed to waive any immunities or limitations to which the City is entitled under Minnesota Statutes Chapter 466 or otherwise.

21 Severability. In the event one or more of the provisions contained in this Contract shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22 Entire Agreement. This Contract, including any attached exhibits, constitutes the entire, final and exclusive agreement between the parties with regard to the subject matter hereof, and supersedes all prior written or oral understandings, representations and agreements by or between the parties relating thereto.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed on their behalf by the proper officers thereunto duly authorized and their corporate seal to be hereto affixed, the day and year first above written.

CITY:

CITY OF RED WING

By: _____
Dan Bender, Mayor

Date: _____

By: _____
Kay Kuhlmann, Council Administrator

Date: _____

By: _____
Teri L. Swanson, City Clerk

Date: _____

CONTRACTOR:

INSERT

By: _____

Date: _____