

SECTION 4
TERMS AND CONDITIONS
FOR
MISCELLANEOUS SERVICES AND OTHER PURCHASES

Rev. 04/19/12

4.1. **SCOPE OF SERVICES:**

As described in Section 2 – Project Specifications of the RFR and the Provider’s response.

4.2. **TERM OF CONTRACT:** - Reserve

4.3. **COMPENSATION:** - Reserve

4.4. **MANAGEMENT:** - Reserve

4.5. **INTENT:** It is the intent of the Contract to secure the services of the Provider or a duly authorized and competent representative or representatives of the Provider acceptable to the City. Failure of the Provider for any reason to make the service of such a person or persons available to the City to the extent necessary to perform the services required skillfully and promptly shall be cause for termination of the Contract. All persons engaged in the work required under the Contract shall be authorized or permitted under State law and the ordinances of the City to perform such services, as required by law.

4.6. **LEGAL STATUS:** If the Provider is a corporation or other legal business entity, it must have a current license to do business in the State of Connecticut that is on file with the Connecticut Secretary of State's office, or it must be organized under the laws of the State of Connecticut and current in terms of its required filings. Evidence acceptable by Procurement Manager must, when required, be filed with the Procurement Manager before performance of contract is started.

4.7. **INSURANCE REQUIREMENTS:** A certificate of insurance must be presented to the City in order for the Contract to take effect. The certificate must name the City as an additional insured on the face of the document and must bear the original signature of an authorized Agent for the Producer. All policies must be written on a "per occurrence" basis. The Provider is responsible for the cost of maintaining such insurance throughout the duration of the project. Insurance requirements are detailed in document #1008, Miscellaneous Services Insurance Requirements located at <http://purchasing.hartford.gov/webfiles/Documents.aspx>

4.8. **TERMINATION:** The City may at any time, and for any reason, in its sole discretion, direct the discontinuance of the services and work contemplated under the Contract for a period of time. Such direction shall be in writing and shall specify the period during which the work shall be discontinued. The work shall be resumed on the dates specified in such direction, or upon such other date as the City may thereafter specify in writing. The period during which such work shall have been discontinued shall be deemed added to the time for performance. In the event that the City directs the discontinuance of the services hereunder for a period of time in excess of six (6) months, through no fault of the Provider, the parties may negotiate and adjustment in the fees payable hereunder due to a rise in the cost of performance. Stoppage of work under this article shall not give rise to any claim against the City.

The City may at any time and for any reason, with or without cause, in its sole discretion, terminate the Contract by written notice specifying the termination date, which shall be not less

than seven (7) days from the date such notice is given. In the event of such termination, services shall be paid for in such amount as shall compensate the Provider for the portion of the work satisfactorily performed prior to termination. Such amount shall be fixed by the City after consultation with the Provider, and shall be subject to audit by the City's Comptroller. Termination under this section shall not give rise to any claim against the City for damages or for compensation in addition to that provided hereunder.

- 4.9. **EQUIPMENT FURNISHED:** Any equipment or item furnished is to be new, unused and currently in production. All accessories and services necessary for proper functioning on delivery are assumed to be included in the Contract though not specifically mentioned. All assemblies, sub-assemblies and component parts for all equipment or items specified are to be standard and interchangeable.
- 4.10. **ASSIGNMENT:** The Provider shall not assign or subcontract the Contract or any of the services to be performed by it hereunder without prior consent of the City in writing. The Provider shall be as fully responsible to the City for the acts and omissions of its subcontractors as it is for the acts and omissions of people directly employed by it. The Provider shall require any subcontractor approved by the City to agree in its contract to observe and be bound by all obligations and conditions of the Contract to which Provider is bound.
- 4.11. **REJECTED WORK OR MATERIALS:** Rejected, items, commodities and/or work must be removed by the Provider from City of Hartford premises within 48 hours at the Provider's expense. Immediate removal may be required when safety or health issues are present.
- 4.12. **DEFAULT:** Any of the following occurrences or acts shall constitute an Event of Default under the Contract:

If default shall be made by the Provider, its successors or assigns, in the performance or observance of any of the covenants, conditions or agreements on the part of the Provider set forth in the Contract; or

If any determination shall have been made by competent authority such as, but not limited to, any federal, state or local government official, or a certified public accountant, that the Provider's management or any accounting for its funding, from whatever source, is improper, inadequate or illegal, as such management or accounting may relate to the Provider's performance of the Contract; or

If a decree or order by a court having jurisdiction in the matter shall have been entered adjudging the Provider a bankrupt or insolvent or approving as properly filed a petition seeking reorganization, readjustment, arrangement, composition or similar relief for the Provider under the federal bankruptcy laws, or any other similar applicable federal or state law; or

If any competent authority shall have determined that the Provider is in default of any federal, state or local tax obligation.

Pursuant to a Resolution passed by the Court of Common Council on September 12, 1983, default on the part of any outstanding debt owed to the City by the Provider shall be considered just cause for termination of the Contract. Default shall be considered to have occurred when a monthly payment required by a repayment agreement is thirty (30) or more days late.

- 4.13. **FORCE MAJEURE:** The City and/or Provider shall not be in default if either is unable to fulfill, or is delayed in fulfilling, any of its respective obligations hereunder in spite of its employment of best efforts and due diligence, as a result of natural disasters, unusually severe weather, catastrophic events, war, governmental preemption in a national emergency, enactment of or change in law, rule or regulation which adversely affect the City and/or Provider's ability to perform its respective obligations under the Contract. If the City and/or Provider believe that a hindrance or delay has occurred, it shall give prompt written notice to the other Party of the nature of such hindrance or delay, its effect and the action needed to avoid the continuation of such hindrance or delay. Notwithstanding notification of a claim of hindrance or delay by the City and/or Provider, such request shall not affect, impair or excuse the other Party to the Contract from the performance of its obligations hereunder unless its performance is impossible, impractical or unduly burdensome or expensive.

If a Force Majeure effects the use of property or equipment for which lease payments are being made then those payments will be waived until their use has been restored. Waived payments will not be subject to interest penalties or other fees.

Changes in the economics of the Contract or changes in Provider's economic condition shall not constitute a Force Majeure excusing Provider's performance under the Contract.

- 4.14. **INDEMNIFICATION:** Provider shall not assert any claim arising out of any act or omission by any agent, officer or employee of the City in the execution or performance of the Contract against any such agent, officer or employee.

A. The Provider will indemnify the City for any damages or costs to which it may be put by reason of injury to the person or property of another resulting from the performance, non-performance, negligence or carelessness in the performance of the contract or in failure to comply with any provisions of the contract.

B. The Provider expressly agrees to at all times indemnify, defend and save harmless the City of Hartford and its respective officers, agents, and employees on account of any and all demands, claims, damages, losses, infringement of patent rights, litigation, financial costs and expenses, including counsel fees, and compensation arising out of personal injuries (including death), any damage to property, real or personal and any other loss, expense or aggrievement directly or indirectly arising out of, related to or in connection with the Project and the work to be performed hereunder by the Provider, its employees, agents, subcontractors, material suppliers, or anyone directly or indirectly employed by any of them. The Provider shall and does hereby assume and agree to pay for the defense of all such claims, demands, suits, proceedings and litigation, including costs and attorneys fees. The provisions of this paragraph shall survive the expiration or early termination of the Contract and shall not be limited by reason of any insurance coverage.

- 4.15. **CONFLICT OF INTEREST:** No member of the governing body of the City, and no other officer, employee, or agent of the City shall have any personal interest, direct or indirect, in the Contract, and the Provider covenants that no person having such interest shall be employed in the performance of the Contract.

- 4.16. **ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION:**

The Provider agrees to abide by the provisions of Section 2-680 et seq. of the City of Hartford

Municipal Code (as applicable), Executive Orders Number 3 and 17 of the State of Connecticut; and Presidential Executive Orders Number 11246, 11375 and 11063. In carrying out this program, the Provider shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference.

The Provider shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training; including apprenticeship. The Provider shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government, setting forth the provisions of the non-discrimination clause.

The Provider shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, age, sex, national origin, mental disability, physical handicap, or sexual preference. The Provider shall incorporate, or cause to be incorporated, this provision in any and all subcontracts entered into pursuant to the Contract. The Provider agrees to abide by the terms and conditions contained in the City of Hartford's Bidder's EEO Report.

- 4.17. **PERFORMANCE EVALUATION**: The Provider understands that during the course of and at the conclusion of the work that the City will evaluate its overall performance. Based on information gathered from the Managing Authority, the Procurement Manager will assess factors including, but not limited to, quality of work or service, completion record, job supervision, working relationship with other providers, bills for extras, organization, cooperation, worksite cleanliness, and compliance with City ordinances including W/MBE requirements. The Provider further understands and agrees that this record will be available for public scrutiny both in the project file and on the City's web site for a minimum of two years. The Provider will not contest the Procurement Manager's decision, which will be final.
- 4.18. **APPLICABLE LAW**: The Provider shall comply with and the Contract shall be construed in accordance with the laws regulations, ordinances and codes of the United States, the State of Connecticut, the Charter and Regulations of the City of Hartford. Links to many of these laws and regulations are located at: <http://purchasing.hartford.gov/webfiles/Documents.aspx>
- 4.19. **MEDIATION AND ARBITRATION**: In the event a dispute arises out of or relates to the Contract or the breach thereof and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by a single person selected by the parties. Any dispute arising in connection with the Contract, that is not resolved or settled through mediation as referenced above shall be settled by arbitration. The Provider and the City shall each choose an arbitrator, and the two arbitrators thus chosen shall select a third arbitrator. The findings and award of the three arbitrators thus chosen shall be final and binding on the parties hereto, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Arbitration shall be held in Hartford, Connecticut.
- 4.20. **AMENDMENTS**: The City may, from time to time, request changes in the scope of services to be performed by the Provider hereunder. Any such change, including any increase or decrease

in the amount of the Provider's compensation, which are mutually agreed upon by and between the City and the Provider, shall be incorporated in a written amendment to the Contract.

- 4.21. **CONFLICTING TERMS**: The terms and conditions of the contract signed upon award of the bid will supersede any inconsistent provisions of the bidding documents.
- 4.22. **CUMULATIVE REMEDIES**: All rights exercisable by and remedies of the City hereunder shall be cumulative and the exercise or beginning of the exercise by the City of any of its rights or remedies hereunder shall not preclude the City from exercising any other right or remedy granted hereunder or permitted by law.
- 4.23. **SUCCESSORS & ASSIGNS**: The City and the Provider each binds itself and its successors and assigns with respect to all covenants of the Contract. The Provider shall not assign or transfer any interest in the Contract without the prior written approval of the City.
- 4.24. **INVALID PROVISIONS**: If any provision of the Contract is held invalid, the balance of the provisions of the Contract shall not be affected thereby if the balance of the provisions of the Contract would then continue to conform to the requirements of applicable laws.
- 4.25. **NON-WAIVER**: Any failure by the City or the Provider to insist upon the strict performance by the other of any of the terms and provisions hereof shall not be a waiver, and each party hereto, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the other, of any and all of the terms and provisions of the Contract and neither party hereto shall be relieved of such obligation by reason of the failure of the other to comply with or otherwise enforce or to seek to enforce any of the provisions of the Contract.
- 4.26. **INDEPENDENT PROVIDER**: Provider, including its' employees, is an independent Provider and shall not be regarded as an employee or agent of the City.
- 4.27. **SUBCONTRACTORS**: Portions of this work may be subcontracted, provided that: The City shall give prior approval to such subcontract in writing.

All of the terms, covenants, conditions and provisions of the Contract shall have been incorporated in such subcontract(s) and the subcontractor(s) shall agree in writing to assume, perform and be bound by the Contract and all the terms, covenants, conditions and provisions hereof.

The City shall not be liable for payment of any wages, materials, or other expenses of any subcontractors.

- 4.28. **ESTABLISHMENT AND MAINTENANCE OF RECORDS**: The Provider agrees to establish and maintain fiscal control and accounting procedures that assure proper accounting for all funds paid by the City to the Provider under the Contract. The Provider agrees that all records with respect to all matters covered by the Contract shall be maintained during the term of the Contract, and for a minimum of three years following termination, including any renewal or extension.
- 4.29. **AUDITS**: At any time during normal business hours, and as often as may be deemed necessary, the Provider shall make available to the City, for examination, all records with respect to all matters covered by the Contract.

- 4.30. **REPORTS AND INFORMATION:** The Provider shall furnish the City with such information and reports concerning the progress and management of this work as may be required from time to time. The form of said reports shall be determined by the City consistent with the City's requirements.
- 4.31. **INSPECTION:** The City shall have the right to inspect Provider's work at all reasonable times. This right of inspection is solely for the benefit of the City and does not transfer to the City the responsibility for discovering patent and latent defects. The Provider has the sole and exclusive responsibility for delivering in accordance with the specifications, schedules and approved plans.
- 4.32. **SAFEGUARDING OF FUNDS:** In the event that the City provides the Provider with a cash advance or makes a lump sum payment, the Provider shall deposit all project funds in a Hartford financial institution with adequate FDIC or FSLIC coverage, and the balance exceeding the FDIC coverage shall be secure. Such security shall be satisfactory to the City. Consistent with the goal of expanding opportunities for Minority Business Enterprises, the Provider is encouraged to use minority banks where possible.
- 4.33. **ADVERTISING:** Providers may not reference sales to the City of Hartford for advertising and promotional purposes without the prior approval of Procurement Services.
- 4.34. **LICENSES AND PERMITS** The Provider certifies that for the duration of contract performance, he shall have and provide proof of permits and licenses as required by the City of Hartford Department of Code Enforcement and/or other City, State or Federal regulatory bodies as applicable.
- 4.35. **PATENT INFRINGEMENT:** Provider shall fully indemnify, save harmless and protect the City, the City's agents, and agents and employees of all of them against any loss, claim, liability, damage or expense resulting directly or indirectly from patent infringement claims arising out of Provider's performance.
- 4.36. **DELIVERY AND INVOICING:** City's order number must be shown on all packages, invoices and correspondence.
- If services include the shipment of equipment, items or commodities -
 - Invoice and bill of lading or other notice containing complete shipping information must be mailed at time of shipment.
 - Delivery will be inside, FOB Hartford unless otherwise stated in the specifications.
- 4.37. **PAYMENT:** Payment will be made to the Provider within thirty (30) days after receipt by the City of acceptable invoice with appropriate supporting documentation. The acceptance, by the Provider or by any person claiming under the Provider, of the final payment as approved by the Director of Finance shall operate as and be a release to the City from all claims of and liability to the Provider and to the Provider's representatives and assigns for anything done, furnished for or relating to the contract or for any act or omission of the City or of any person relating to or affecting the contract except such sums as may be retained by the City under the maintenance or guarantee provisions of the Contract. The City shall have the right, during the course of the Provider's services and for a period of two years after completion of the services, to examine Provider's records to verify all direct charges, expenses and disbursements made or incurred by Provider in connection with the services.
- 4.38. **NON-APPROPRIATION OF FUNDS:** It is assumed that City departments that enter into an

Contract with the Provider have obtained approval, authority and funding to make the initial payment(s) during the current fiscal year. The department's ability to make subsequent payments may be contingent upon the appropriation of funds by the relevant government entity or legislative authorities of funds for this purpose. If such additional funds are not so appropriated either the Provider or the City may terminate the Contract as of the first day of the applicable subsequent fiscal year in which such funds were not made available. The City agrees not to effect such termination for the sole purpose of replacing the work product with an equivalent product supplied by others.

- 4.39. **TAXES:** The City is exempt from Connecticut Sales Tax under G.S. Sect. 12-412(A), Federal excise taxes, and the provisions of the Federal Robinson-Patman Act.

In accordance with Chapter 2, Section 2-571(b) of the Municipal Code of the City of Hartford, the Provider must be current in all tax obligations to the City of Hartford. A Provider found to be delinquent in the payment of personal or real property taxes, or found to be the owner of an interest of twenty-five percent (25%) or more in a corporation that is delinquent in the payment of personal or real property taxes shall be required to submit a plan whereby the Provider will make current all arrearage of taxes. Such plan shall include a schedule of payments sufficient to make such Provider current within a time period satisfactory to the City's Operating Officer.

- 4.40. **WARRANTIES, GUARANTEES, & INSTRUCTIONS:** Provider warrants for itself, its subcontractors and its suppliers, that services performed shall conform to the requirements of the Contract and shall be accomplished in a workmanlike manner and, unless otherwise specified, in accordance with generally recognized and adequate practices and standards. If any services do not conform in all respects or are defective in any respect, and the City notifies Provider within a reasonable time after discovery thereof, Provider, at its sole expense, promptly shall correct such non-conformity or defect. This obligation of Provider to correct non-conforming or defective services shall continue for one year after final completion of services. All warranties herein shall be assignable to any customer of the City or agent thereof intended to benefit from such services. These warranties shall survive any termination of the Contract and any acceptance or payment by the City and shall be in addition to any remedies provided by applicable law.

Provider warrants that the merchandise supplied hereunder will be of good workmanship and material, free from defects and in accordance with specifications and if the intended use thereof has been made known to vendor that it is adequate for that intended use.

Provider warrants that all goods and services furnished hereunder will be designed, constructed and performed so as to comply with the Williams-Steiger Occupational Safety and Health Act of 1970, as amended from time to time, and the rules, regulations and standards issued there under by any applicable governmental authority which as of the date of the Contract will apply to the goods and services furnished hereunder.

- 4.41. **OWNERSHIP OF PRINTED MATERIAL AND OTHER PRODUCTS:** The City of Hartford has sole and exclusive right and title to all printed material, art work and any other product produced for the City under contract. The original artwork and/or any plates or computer files used in preparing and completing the work shall be considered property of the City of Hartford whether supplied by or created for the City. All artwork and electronic files shall be returned with the completed job. The Provider shall not copyright any printed matter produced under the contract and shall be responsible for the safekeeping of all printing plates, returning them to the City upon request.

- 4.42. **SECURITY:** Provider must adhere to established security and/or property entrance policies and procedures established for each City location. It is the responsibility of the Provider to understand and adhere to those policies and procedures prior to any attempt to enter the premises.
- 4.43. **HAZARDOUS WASTE:** In the event that the specified work involves the handling of hazardous waste and associated insurance coverages are not identified elsewhere in the bid documents, the Provider's insurance policy must provide Pollution Liability coverage as described in Section 4.4 Insurance Requirements.

Title to all Waste accepted by the Provider from City for transport and disposal by the Provider shall pass directly from the City to the Provider at the time of such acceptance. Appropriate documents so signifying shall be signed by a representative of the Provider. Under no circumstances shall title to such accepted Wastes be deemed to be held by the City.

The Provider warrants that it understands the currently known hazards and suspected hazards that are presented to persons, property, and the environment by the transport, treatment, and disposal of Wastes. The Provider further warrants that it will perform all services under the Contract in a Safe, efficient, and lawful manner using industry-accepted practices and procedures, and in full compliance with all applicable State and Federal laws and regulations.

- 4.44. **NOTIFICATION:** Reserve
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END OF SECTION