

TERMS AND CONDITIONS OF FRCOG'S STANDARD CONTRACT FOR SERVICES

ENGAGEMENT OF THE SELLER / CONTRACTOR/ SERVICE PROVIDER (hereinafter termed "Seller") - Seller agrees to perform the work described in the Purchase Order and attachments (hereinafter "PO" or "Agreement"). In performing the services under this Agreement, the Seller shall be deemed to be independent and not an employee of the Franklin Regional Council of Governments "Council". The Council may terminate, in writing, this Agreement for non-performance of services required including the progress of work for services. Council may terminate the contract for convenience with written notice. Upon receipt of written notification from the Council to the Seller that the Agreement or any portion thereof is to be terminated, Seller shall immediately cease operations on the work, and assemble all material that has been prepared, developed, furnished or obtained under the Agreement that may be in the possession or custody of the Seller and shall transmit same to the Council on or before the 10th day following receipt of the written notice of termination together with evaluation of the cost of work performed. Seller shall be entitled to complete payment for satisfactorily completed uncompensated work performed prior to such notice and for the cost of assembling the material to be transmitted to the Council. In the event that there is a disagreement between Seller and the Council, the terms of this Agreement shall control.

SERVICES AND RESPONSIBILITIES OF THE SELLER - Seller shall serve as the professional representative of the Council during the project and will consult with and advise the Council during performance of services. Seller shall receive prior approval from the Council for any expenditure not specifically provided for in this Agreement, which is thought to be billable. Seller is advised that work undertaken within the terms and provisions of this Agreement shall be with the full knowledge and consent of the Council and any work performed outside the Services listed on the PO without the prior written agreement of the Council, shall not be considered as work under this Agreement and payment for such work may not be allowed. Seller shall complete all work specified on the PO or any attachment thereto. Records of the Seller pertinent to this Agreement shall be retained for a period of not less than seven (7) years (MGL c. 4 § 7).

SCHEDULE - Services as required under this Agreement shall be completed by the Seller according to the dates on the PO.

RESPONSIBILITIES OF THE COUNCIL- The Council shall make available to the Seller available information pertinent to the project including background information on file at Council Office.

PAYMENTS TO THE SELLER - For all services performed under this Agreement, Seller shall be compensated in accordance with invoices submitted to the Council. Seller shall invoice per the milestone schedule, per hour, or by lump sum, as indicated on the PO. Invoice should document dates of services and a description of services rendered. Seller will provide their own professional supplies and materials. Supplies or materials purchased as a direct cost outside this agreement will become property of the Council and must have prior approval. Council is not subject to sales tax. A Federal W-9 Form must be submitted with the signed contract. The Council fiscal year ends June 30. Invoices for work at the end of the fiscal year must be received within 10 calendar days (July 10), even if PO remains "open". Due to certain funding constraints, invoice is not received by this deadline could result in nonpayment. The Council prefers to pay vendors by Electronic Funds Transfer (EFT) and will require completion of an enrollment form for direct payment of invoiced amounts to the Sellers bank account with the signed contract.

OWNERSHIP OF DOCUMENTS AND WORK PRODUCT - Council will own any newly created intellectual property under the agreement and grant Seller an unlimited license to anything newly created. Seller will retain ownership of any pre-existing intellectual property incorporated into the work product and grant the Council an unlimited license to this intellectual property for the purposes of the contracted project.

SEVERABILITY & APPLICABLE LAW - In the event that any provision of this Agreement shall be deemed invalid, unreasonable or unenforceable by any court of relevant jurisdiction, such provision shall be stricken from the Agreement or modified so as to render it reasonable, and the remaining provisions of this Agreement, or the modified provision as provided above, shall continue in full force and effect and be binding upon the parties so long as such remaining or modified provisions reflect the intent of the parties as of the date of this Agreement. Further, should this Agreement omit any statutory or regulatory requirements which would otherwise render this Agreement illegal, then this Agreement shall be deemed amended to the minimum extent necessary to comply with said statutes or regulations. This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts and any suit brought pursuant to this Agreement shall be commenced only therein.

INSURANCE REQUIREMENTS - The Council cannot carry the Seller under its insurance policy. The Seller is expected to carry suitable levels of professional and personal insurance for the type of services rendered INCLUDING Statutory Worker's Compensation insurance. The Seller shall provide the Council with a copy of their insurance certificate at the time of contract execution.

AMENDMENTS/MODIFICATIONS- No amendment or modification to this Agreement shall be effective unless it is in writing, signed by the duly authorized representatives of both parties, complies with the provisions of this Agreement, and all other regulations and requirements of law.

INDEMNITY

a. To the fullest extent permitted by law, Seller shall defend, indemnify, and save harmless the Council and its respective duly elected or appointed officials, agents and employees from and against all demands, claims, damages, liabilities, losses, costs, and expenses (including, but not limited to, reasonable attorney fees) (referred to collectively as "demands") arising out of or resulting from any work performed pursuant to this Agreement including but not limited to any negligent acts, errors, or omissions of the Seller,

any subSeller of the Seller, or any person directly or indirectly employed by any of them, or by a defect of a product or design supplied by the Seller or subSeller. Such obligation shall not negate, abridge, or reduce in any way any additional indemnification rights of the Council, that otherwise may exist under statute or in law or equity.

b. The Seller shall defend, indemnify, and hold harmless the Council from any and all demands relating to wages, overtime compensation, or other employee benefits by employees employed directly or indirectly by the Seller for work performed in connection with the work hereunder or required by state or federal law, including but not limited to Fair Labor Standards Act and Massachusetts Prevailing Wage Law.

c. The indemnification obligations of the Seller and subSeller shall not be limited in any way by any limitations on the amount or type of damages, compensations, or benefits payable by or for the Seller or subSeller under any federal or state law.

d. In the event of a breach of this Agreement by the Seller, the Seller shall pay the Council all reasonable attorney fees, costs and other litigation expenses incurred by the Council in enforcing its rights as a result of said breach in addition to any damages for said breach.

ASSIGNABILITY- The Seller shall not assign any interest in this Agreement, and shall not transfer any interest in the same, without prior written consent of the Council. No subcontract may be awarded by the Seller, the purpose of which is to fulfill in whole or in part the services required herein, without said written consent of the Council. Nothing herein shall be construed to prevent an assignor's due performance of its entire obligation.

CONFLICT OF INTEREST- The Council and the Seller shall take all reasonable actions necessary to ensure that their officers, employees, agents, and members of their governing bodies are aware of the requirements, and comply with the provisions of MGL, Chapter 268A, the so-called Conflict of Interest Law.

FORCE MAJEURE- The parties shall not be liable for the failure to wholly perform their duties if such failure is caused by catastrophe, riot, war, governmental order or regulation, strike, fire, accident, act of God or other similar or different contingency beyond the reasonable control of the Seller or the Owner.

CONFIDENTIALITY- Seller acknowledges that information collected and evaluated under the contract's scope of services may be considered confidential information and acknowledges that they will not, at any time, whether during the term of the contract or thereafter, disclose to any person, except as required or contemplated by the contract's scope of services, any confidential information of any kind acquired by them in connection with the performance of the contract.

SUCCESSORS AND ASSIGNS - This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each of the parties hereto

NONDISCRIMINATION- Seller shall not discriminate against any person because of race, color, religious creed, national origin, gender, ancestry, sexual orientation, age, handicap, gender identity, genetic information, military service, .or any other protected class under the law.

MARGINAL HEADINGS, PRONOUNS - The marginal headings used in this Agreement are for convenience only and shall not be deemed to be a binding portion of this Agreement. The pronouns he, she, or it, are also used for convenience, and in the event that an improper pronoun has been used, it shall be deemed changed so as to render the sentence in which it is contained effective in accordance with its terms.

ACCESS TO RECORDS - Seller will make all books, accounts, data, records, reports, files and other papers required to be kept or kept in the course of the work to be performed under this Agreement available at all reasonable times for inspection, review and audit by the COUNCIL..

RIGHTS AND REMEDIES - The Council's rights and remedies provided in this Agreement are in addition to any other rights and remedies provided by law.

VIOLATION OF LAW - The Contractor shall strictly observe and comply with all federal, state and local laws and regulations which may govern the work to be performed as herein specified.

GOVERNING LAW AND VENUE - This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Venue and jurisdiction of any action will only be brought in the Commonwealth of Massachusetts, County of Franklin

LICENSES AND FEES - The Seller shall obtain all licenses and permits (other than the license and permit granted by the Agreement) required to conduct the activities pursuant to this Agreement and shall promptly pay all fees, taxes or other state or municipal costs necessary for said licenses, permits or activities.

ENTIRE UNDERSTANDING - This Agreement, together with the attachments hereto, if any, represent the entire understanding of the parties, and neither party is relying upon any representation not contained herein.