

AGREEMENT #Type Agreement #

GOODS AGREEMENT

This Agreement is made between:
THE CITY OF SALEM,
An Oregon Municipal Corporation
("City")
and

Type Company Name
("Provider")
For

"Type Title of Agreement"

1. PROVIDER'S OBLIGATIONS

1.1 Provide Type Description of Goods, as set forth in the "SUPPORTING DOCUMENTS" attached hereto and, by this reference, incorporated herein. Provider expressly acknowledges that time is of the essence of any completion date set forth in the SUPPORTING DOCUMENTS, and that no waiver or extension of such deadline may be authorized except in the same manner as herein provided for authority to exceed the maximum compensation. The goods defined and described in the "SUPPORTING DOCUMENTS" shall hereinafter be referred to as "Goods."

1.2 Provider shall obtain and maintain during the term of this Agreement and until City's final acceptance of all Goods received hereunder, a policy or policies of liability insurance including commercial general liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) for each occurrence for Bodily Injury and Property Damage.

1.2.1 The insurance required in this Article shall include the following coverages:

- Comprehensive General or Commercial General Liability, including personal injury, contractual liability, and products/completed operations coverage;
- Automobile Liability.

1.2.2 Each policy of such insurance shall be on an "occurrence" and not a "claims made" form, and shall:

- Name as additional insured "the City of Salem, Oregon, its officers, agents and employees" with respect to claims arising out of the provision of Goods under this Agreement;
- Apply to each named and additional named insured as though a separate policy had been issued to each, provided that the policy limits shall not be increased thereby;
- Apply as primary coverage for each additional named insured except to the extent that two or more such policies are intended to "layer" coverage and, taken together, they provide total coverage from the first dollar of liability;

- Provider shall immediately notify the City of any change in insurance coverage
 - Provider shall supply an endorsement naming the City, its officers, employees and agents as additional insureds within sixty (60) days of the Effective Date of this Agreement; and
 - Be evidenced by a certificate or certificates of such insurance approved by the City.
- 1.3 All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 1.4 Provider agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of this Agreement when employed by Provider. Provider agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Provider agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.
- 1.5 In all solicitations either by competitive bidding or negotiation made by Provider for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Providers of the Provider's obligations under this Agreement and the Salem Revised Code Chapter 97, Title VI of the Civil Rights Act of 1964 and other federal nondiscrimination laws.

2. CITY'S OBLIGATIONS

- 2.1 City shall pay Provider the sum of \$Type Agreement Amount as provided herein as full compensation for the Goods as specified in the SUPPORTING DOCUMENTS.
- 2.2 In no event shall Provider's total of all compensation and reimbursement under this Agreement exceed the sum of \$Type Agreement Amount without express, written approval from the City official whose signature appears below, or such official's successor in office. Provider expressly acknowledges that no other person has authority to order or authorize additional Goods which would cause this maximum sum to be exceeded and that any authorization from the responsible official must be in writing. Provider further acknowledges that any Goods delivered or expenses incurred without authorization as provided herein is done at Provider's own risk and as a volunteer without expectation of compensation or reimbursement.

3. GENERAL PROVISIONS

- 3.1 This is a non-exclusive Agreement. Provider is obligated to provide the Goods at the rates set forth above during the term of this Agreement unless Provider is unavailable

because of prior commitment. City is not obligated to procure any specific amount of goods from Provider, and is free to procure similar goods of other providers in its sole discretion.

- 3.2 Provider is an independent contractor and not an employee or agent of the City for any purpose.
- 3.3 Provider is not entitled to, and expressly waives all claims to City benefits such as health and disability insurance, paid leave, and retirement.
- 3.4 This Agreement embodies the full and complete understanding of the parties respecting the subject matter hereof. It supersedes all prior agreements, negotiations, and representations between the parties, whether written or oral.
- 3.5 This Agreement may be amended only by written instrument executed with the same formalities as this Agreement.
- 3.6 The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
- 3.7 This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Marion County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.
- 3.8 Provider shall defend, save, hold harmless and indemnify the City and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of Provider or its officers, employees, contractors, or agents under this Agreement.
- 3.9 Neither party to this Agreement shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's officers, employees or agents.
- 3.10 If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Provider and the City set forth in this Agreement.

- 3.11 Deliveries will be F.O.B destination. Provider shall pay all transportation and handling charges for the Goods. Provider is responsible and liable for loss or damage until final inspection and acceptance of the Goods by the City. Provider remains liable for latent defects, fraud, and warranties.
- 3.12 The City may inspect and test the Goods. The City may reject non-conforming Goods and require Provider to correct them without charge or deliver them at a reduced price, as negotiated. If Provider does not cure any defects within a reasonable time, the City may reject the Goods and cancel this Agreement in whole or in part. This paragraph does not affect or limit the City's rights, including its rights under the Uniform Commercial Code, ORS Chapter 72 (UCC).
- 3.13 Provider represents and warrants that the Goods are new, current, and fully warranted by the manufacturer. Delivered Goods will comply with SUPPORTING DOCUMENTS and be free from defects in labor, material and manufacture. Provider shall transfer all warranties to the City.
- 3.14 Pursuant to ORS 279A.200 to 279A.225, the parties intend that this Agreement may be used by other public contracting agencies. Any such cooperative procurement shall be between the purchasing public contracting agency and the Provider, and those parties shall be solely responsible for ensuring that such procurement is in compliance with Oregon law. The City makes no representations or warranties as to the ability of another public contracting agency and the Provider to use this Agreement as a cooperative procurement.

4. SUPPORTING DOCUMENTS

- 4.1 The following documents are, by this reference, expressly incorporated in this Agreement, and are collectively referred to in this Agreement as the "SUPPORTING DOCUMENTS:"
- The City's Invitation for Bids #Bid #, together with any documents incorporated by reference therein.
 - The Provider's complete written Proposal dated Date of Proposal.
- 4.2 This Agreement and the SUPPORTING DOCUMENTS shall be construed to be mutually complimentary and supplementary wherever possible. In the event of a conflict which cannot be so resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the SUPPORTING DOCUMENTS. In the event of conflict between provisions of two of the SUPPORTING DOCUMENTS, the several supporting documents shall be given precedence in the order listed in Article 4.1.

5. REMEDIES

- 5.1 In the event Provider is in default of this Agreement, City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:
- 5.1.1 Termination of this Agreement;

- 5.1.2 Withholding all monies due for the Goods that Provider has failed to deliver within any scheduled completion dates or any Goods that have been delivered inadequately or defectively;
- 5.1.3 Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
- 5.1.4 Exercise of its right of setoff.
- 5.1.5 These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

5.2 In no event shall City be liable to Provider for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Provider exceed the amount due, Provider shall pay immediately any excess to City upon written demand provided.

6. TERM AND TERMINATION

6.1 Term

- 6.1.1 This Agreement shall be effective from the date of execution on behalf of the City as set forth below (the “Effective Date”) and shall continue in full force and effect until End of First Year, unless sooner terminated as provided in Subsection 6.2.
- 6.1.2 This Agreement may be extended for no more than four (4) additional one-year terms upon mutual written consent of the parties.

6.2 Termination

- 6.2.1 The City and Provider may terminate this Agreement by mutual agreement at any time.
- 6.2.2 The City may, upon not less than thirty (30) days’ prior written notice, terminate this Agreement for any reason deemed appropriate in its sole discretion.
- 6.2.3 Either party may terminate this Agreement, with cause, by not less than fourteen (14) days’ prior written notice if the cause is not cured within that fourteen (14) day period after written notice. Such termination is in addition to and not in lieu of any other remedy at law or equity.

7. NOTICE

- 7.1 Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed at the address or facsimile number set forth below:

If to the City:

City Department
Attn: Contract Administrator
Address
Salem, Oregon 97301
Phone: (503) Phone number

Email: Email address

With a copy to:

Contracts & Procurement Division
City of Salem, Oregon
555 Liberty Street SE, Room 330
Salem, Oregon 97301-3503
Phone: (503) 588-6136
Fax: (503) 588-6400
Email: contracts@cityofsalem.net

If to Provider:

Providers Company Name
Attn: Providers Project Manager
Address
City, State, Zip
Phone: Phone Number
Email: Email Address

8. WAIVER OF BREACH

- 8.1 One or more waivers or failures to object by either party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

9. PROVIDER'S COMPLIANCE WITH TAX LAWS

- 9.1 Provider represents and warrants to the City that:

9.1.1 Provider shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

9.1.2 Provider, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

- 9.2 Provider's failure to comply with the tax laws of the State of Oregon and all applicable tax laws of any political subdivision of the State of Oregon shall constitute a material breach of this Agreement. Further, any violation of Provider's warranty, as set forth in

this Article 9, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall entitle the City to terminate this Agreement and to seek damages and any other relief available under this Agreement, at law, or in equity.

- 9.3 Any Goods delivered to the City under this Agreement shall be provided to the City free and clear of any and all restrictions on or conditions of its use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

THE CITY OF SALEM, OREGON

PROVIDER NAME

By: _____
Keith Stahley, ICMA-CM, City Manger

By: _____

Printed Name: _____

Date: _____

Title: _____

Date: _____