

GENERAL TERMS & CONDITIONS

1. **PERFORMANCE AND DEFAULT:** If, through any cause, Contractor shall fail to fulfill in timely and proper manner the obligations under The Contract, the City shall have the right to terminate The Contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverable items under The Contract prepared by the Contractor shall, at the option of the City, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of The Contract, and the City may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the City from such breach can be determined. The City reserves the right to require at any time a performance bond or other acceptable alternative performance guarantees from a Contractor without expense to the City.

In the event of default by the Contractor, the City may procure the goods and services necessary to complete performance hereunder from other sources and hold the Contractor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Contractor under The Contract, or upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the City may immediately cease doing business with the Contractor, immediately terminate The Contract for cause, and may take action to debar the Contractor from doing future business with the City.

2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the goods or services offered prior to their delivery, it shall be the responsibility of the Contractor to notify the Contract Lead at once, in writing, indicating the specific regulation which required such alterations. The City reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

3. **AVAILABILITY OF FUNDS:** It is understood and agreed between Contractor and the City that the City's payment obligation under this Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made.

4. **TAXES:** Contractor shall pay all federal, state, and FICA taxes for all employees participating in the provision of services under this Contract.

5. **SITUS AND GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.

6. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using Department is responsible for all payments to the Contractor under the Contract. For services the Contractor shall submit to the City monthly invoices itemized by service provided, the number of hours worked and by whom, the date(s) that services were provided, and the amount owed, along with any supporting documentation that may be requested in advance by the City. Such invoices shall be submitted within thirty (30) days of the rendering of services. The City shall process payments to Contractor within thirty (30) days of submission of such invoices. Invoices should be sent to City of Rocky Mount, Attn: Accounts Payable, PO Box 1180, Rocky Mount, NC 27802-1180, for review and approval.

7. **EQUAL OPPORTUNITY CLAUSE:**

- a. The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the secretary of Labor, are incorporated herein.
 - b. The Contractor(s) agree not to discriminate against any employee or applicant for employment because of physical or mental disabilities in regard to any position for which the employee or applicant is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with such disabilities without discrimination based upon their physical or mental disability in all employment practices.
- 8. CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
- 9. INTELLECTUAL PROPERTY WARRANTY:**
- a. Contractor warrants that:
 - i. Performance under The Contract will not infringe upon any intellectual property rights of any third party; and
 - ii. There are no actual or threatened actions against the Contractor arising from, or alleged under, any intellectual property rights of any third party;
 - b. Should any deliverables supplied by Contractor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Contractor, shall at its option and expense, either procure for the City the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Contractor's judgment, or if further use shall be prevented by injunction, the Contractor agrees to cease provision of any affected deliverables and refund any sums the City has paid Contractor and make every reasonable effort to assist the City in procuring substitute deliverables. If, in the sole opinion of the City, the cessation of use by the City of any such deliverables due to infringement issues makes the retention of other items acquired from the Contractor under this Agreement impractical, the City shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Contractor agrees to refund any sums the City paid for unused Services or Deliverables.
- 10. TERMINATION FOR CONVENIENCE:** If this contract contemplates deliveries or performance over a period of time, the City may terminate this contract at any time by providing 30 days' notice in writing from the City to the Contractor. In that event, any or all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the City, become its property. If the contract is terminated by the City as provided in this section, the City shall pay for those items for which such option is exercised, less any payment or compensation previously made.
- 11. ADVERTISING:** Contractor agrees not to use the existence of The Contract or the name of the City of Rocky Mount as part of any commercial advertising or marketing of products or services. A Contractor may inquire whether the City is willing to act as a reference by providing factual information directly to other prospective customers.
- 12. ASSIGNMENT:** No assignment of the Contractor's obligations nor the Contractor's right to receive payment hereunder shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Contractor, the City may:

- a) Forward the Contractor's payment check directly to any person or entity designated by the Contractor, and
- b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check.

In no event shall such approval and action obligate the City to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all Contract obligations. Upon advance written request, the City may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Contractor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of The Contract.

- 13. INSURANCE:** Contractor agrees to maintain **Commercial General Liability** in amount of \$1,000,000 each occurrence, \$1,000,000 each occurrence in Personal & Advertising Injury with \$2,000,000 General Aggregate, and \$2,000,000 Products/Completed Operations Aggregate. Contractor shall maintain \$1,000,000 in **automobile liability**, and other appropriate insurance, as well as Workers Compensation in the required statutory amount for all employees participating in the provision of services under this Contract. Contractor also agrees to maintain \$1,000,000 in professional liability insurance if the Contractor is engaged in a professional service pursuant to this Contract. The City of Rocky Mount shall be named by endorsement as an additional insured on the General Liability and Automobile Liability policies. Certificates of such insurance shall be furnished by Contractor to the City and shall contain an endorsement to provide the City at least 30 days' written notice of any intent to cancel or terminate by either Contractor or the insuring company. Failure to furnish insurance certificates or maintain such insurance shall be a default under this contract and shall be grounds for immediate termination of this Contract.

REQUIREMENTS - Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of The Contract. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or The Contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract.

- 14. GENERAL INDEMNITY:** The Contractor shall indemnify and hold the City, its officers, agents, and employees, harmless from and against liabilities, claims, actions, demands, costs, damages, losses, and/or expenses of any kind, or nature (including but not limited to court costs and attorney's fees, incurred in connection with the defense of the foregoing) resulting from the fault (as that term is defined in N.C. Gen. Stat. 22B-1) of the Contractor or its agents and/or employees that is a proximate cause of the loss, damage, or expense incurred by the City. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2.
- 17. SUBCONTRACTING:** Performance under The Contract by the Contractor shall not be subcontracted without prior written approval of the City's assigned Contract Lead. Unless otherwise indicated, acceptance of a Contractor's bid shall include approval to use the subcontractor(s) that have been specified.
- 18. CONFIDENTIALITY:** Any City information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Contractor under The Contract shall be kept as confidential, used only for the purpose(s) required to perform The Contract and not divulged or made available to any individual or organization without the prior written approval of the City.

19. CARE OF PROPERTY: The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished it by the City for use in connection with the performance of The Contract or purchased by or for the City for The Contract, and Contractor will reimburse the City for loss or damage of such property while in Contractor's custody.

20. OUTSOURCING: Any Contractor or subcontractor providing call or contact center services to the City of Rocky Mount or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such the performance, which subcontractor and nature of the work has not previously been disclosed to the City in writing, prior written approval must be obtained from the City Department responsible for the contract.

Contractor shall give notice to the using Department of any relocation of the Contractor, employees of the Contractor, subcontractors of the Contractor, or other persons providing performance under a State contract to a location outside of the United States.

21. E-VERIFY: Contractor shall not employ any individuals to provide services to the City who are not authorized by federal law to work in the United States. Contractor represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Contract. Contractor shall also ensure that any of its subcontractors (of any tier) will remain in compliance with these laws at all times while providing subcontracted services in connection with this Contract. N.C.G.S. 143-3.

21. COMPLIANCE WITH IRAN DIVESTMENT ACT OF 2015. Contractor certifies that as of the date of this Contract, Contractor is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Contractor understands that it is not entitled to any payments whatsoever under this Contract if this certification is false. The individual signing this Contract certifies that he or she is authorized by Contractor to make the foregoing statement.

22. COMPLIANCE WITH LAWS: Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with The Contract, including those of federal, state, and City of Rocky Mount having jurisdiction and/or authority.

23. ENTIRE CONTRACT: This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This contract, any addenda hereto, and the Contractor's bid are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

24. ELECTRONIC RECORDS: The City will digitize all Contractor responses to this solicitation, if not received electronically, as well as any awarded contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."

25. **AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the City and the Contractor.
26. **NO WAIVER:** Notwithstanding any other language or provision in The Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the City under applicable law. The waiver by the City of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
27. **FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
28. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in The Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the City under applicable law.