

Minneapolis Park and Recreation Board

Standard Contract for Professional Services

(Over \$100,000 - Non-Grant Funded)

MPRB Contract Number (Assigned by the City Contract Management Office):

MPRB Department Responsible for the Contract: Department Name

This Contract is made between the Minneapolis Park and Recreation Board, ("MPRB") and Consultant Name, ("Consultant").

In consideration of the following terms, conditions and mutual promises, the parties hereby agree as follows:

I. Scope of Service

Consultant agrees to perform the following services for the MPRB:

Include a detailed description of services/deliverables expected under this contract

Services to be provided per the attached Request for Proposal, as modified by the attached proposal from the Consultant. If applicable, a project schedule is attached as Attachment A

II. Compensation

Consultant shall be compensated as per the following fee arrangement: Fee Arrangement

Total compensation under this Contract including reimbursable expense shall not exceed Total Compensation.

A. **Invoices:** Consultant shall submit itemized invoices for services rendered. Invoices submitted by the Consultant that are not itemized will be returned to the Consultant with the request that they resubmit the invoice with itemization. The timeframe for payment by the MPRB to the Consultant begins upon receipt of an approved itemized invoice by the MPRB. The MPRB is under no obligation to honor or pay any invoices submitted more than 120 days after the Termination Date indicated in Section III of the Contract.

B. **Eligible Reimbursable Expenses:** Eligible reimbursable expenses must be included in the Consultant's Scope of Services and agreed to by the MPRB.

III. Effective Date and Termination Date

This Contract shall be in full force and effect from Date through Date unless terminated earlier through the paragraph entitled Termination (under General terms and conditions) or unless extended by the MPRB Contract Manager signing this contract.

IV. Notices

Communication and details concerning this contract shall be directed to the following contract representatives:

CONSULTANT:

Include the complete mailing address here

Phone: Phone Number

Email: Email

MINNEAPOLIS PARK AND RECREATION BOARD:

Minneapolis Park & Recreation Board

2117 West River Road

Minneapolis, MN 55411

Contract Manager, **Contract Manager**

Phone Phone Number

Email Email

V. Terms and Conditions

This Contract is subject to and incorporate all the terms and conditions set forth in the General Conditions attached hereto.

VI. Closing

IN WITNESS WHEREOF, said Consultant and said MPRB have caused this Contract to be executed in their behalf respectively by their proper officers as follows:

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first written above.

FOR THE CONSULTANT:

By _____

Its _____

Date _____

By signing this Contract, I represent that I have the authority to enter into and bind the Consultant to this Contract.

FOR THE MPRB:

By _____
Its Contract Manager

Date: _____

By _____
Its Secretary to the Board

Date: _____

By _____
Its President of the Board

Date: _____

By signing this Contract, I represent that I have the authority to enter into and bind the MPRB to this Contract.

Contract Code:

Fund Fund **Department** Department **Account** Account **Task** Task **Project Number** Project Number
Project Number **Activity** Activity

Minneapolis Park and Recreation Board - General Conditions for Contracts over \$100,000

(Revised: July, 2017)

The General Conditions are terms and conditions that the MPRB expects all of its Consultants to meet. By contracting, the Consultant agrees to be bound by these requirements unless otherwise noted in the Proposal. The Consultant may suggest alternative language to any section at the time the parties negotiate the Contract. Some negotiation is possible to accommodate the Consultant's suggestions.

1 MPRB's Rights

The MPRB reserves the right to cancel the Contract without penalty, if circumstances arise which prevent the MPRB from commencing the project or any phase of the project and at any time if it is determined that the MPRB was fraudulently induced to enter into the contract.

2 Equal Opportunity and Non-Discrimination Laws

The Consultant agrees to comply with applicable provisions of applicable federal, state and city regulations, statutes and ordinances pertaining to the civil rights and non-discrimination in the application for and employment of applicants, employees, sub-contractors and suppliers of the Consultant. In the event the Consultant has questions concerning these requirements, it shall request necessary clarifications from the MPRB. The Consultant shall have submitted and had an "affirmative action plan" approved by the City of Minneapolis prior to entering into the Contract.

3 Insurance

Insurance secured by the Consultant shall be issued by insurance companies acceptable to the MPRB and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the Contract and shall remain continuously in force for the duration of the Contract.

Acceptance of the insurance by the MPRB shall not relieve, limit or decrease the liability of the Consultant. Any policy deductibles or retention shall be the responsibility of the Consultant. The MPRB does not represent that the insurance requirements are sufficient to protect the Consultant's interest or provide adequate coverage. Evidence of coverage is to be provided on a current ACORD Form, Insurance Declaration with the MPRB listed as an additional insured. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. The Consultant shall require any of its sub-contractors, if sub-contracting is allowable under this Contract, to comply with these provisions.

The Consultant and its sub-contractors shall secure and maintain the following insurance:

- a) **Workers Compensation** insurance that meets the statutory obligations with Coverage B-Employers Liability limits of at least \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease each employee.
- b) **Commercial General Liability** insurance with limits of at least \$2,000,000 general aggregate, \$2,000,000 products - completed operations \$2,000,000 personal and advertising injury, \$300,000 each occurrence fire damage and \$5,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the MPRB shall be named an additional insured.
- c) **Commercial Automobile Liability** insurance covering all owned, non-owned and hired automobiles with limits of at least \$2,000,000 per accident.
- d) **Professional Liability** Insurance or Errors & Omissions insurance providing coverage for 1) the claims that arise from the errors or omissions of the Consultant or its sub-contractors and 2) the negligence or failure to render a professional service by the Consultant or its sub-contractors. The insurance policy should provide coverage in the amount of \$2,000,000 each claim and \$2,000,000 annual aggregate. The insurance policy must provide the protection stated for two years after completion of the services or work.
- e) **Network Security and Privacy Liability** insurance for the duration of this agreement providing coverage for, but not limited to, Technology and Internet Errors & Omissions, Security and Privacy Liability, and Electronic Media Liability. Insurance will cover claims that arise from the disclosure of private information from files but not limited to: 1) the errors or omissions of the Consultant, its employees or Sub-contractors and 2) penetration of the Consultant's electronic data network, "firewall" or other security devices by hackers or others. The insurance policy should provide minimum coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If written on a Claims-Made basis, the policy must provide an extended reporting period and have a retroactive date that on or before the date of this Contract or the date Consultant commences work, whichever is earlier.

4 Hold Harmless

The Consultant will defend, indemnify and hold harmless the MPRB and its officers and employees from all liabilities, claims, damages, costs, judgments, lawsuits and expenses, including court costs and reasonable attorney's fees regardless of the Consultant's insurance coverage, arising directly from any negligent act or omission of the Consultant, its employees, agents, by any sub-contractor or sub-consultant, and by any employees of the subcontractors and sub-consultant of the Consultant, in the performance of work and delivery of services provided by or through this Contract or by reason of the failure of the Consultant to perform, in any respect, any of its obligations under this Contract.

The MPRB will defend, indemnify and hold harmless the Consultant and its employees from all liabilities, claims, damages, costs, judgments, lawsuits and expenses including court costs and reasonable attorney's fees arising directly from the negligent acts and omissions of the MPRB by reason of the failure of the MPRB to perform its obligations under this Contract. The

provisions of the Minnesota Statutes, Chapter 466 shall apply to any tort claims brought against the MPRB as a result of this Contract.

Except as provided in the Data Practices section below, neither party will be responsible for or be required to defend any consequential, indirect or punitive damage claims brought against the other party.

5 Subcontracting

The Consultant shall provide written notice to the MPRB and obtain the MPRB's authorization to sub-contract any work or services to be provided to the MPRB pursuant to this Contract. As required by Minnesota Statutes, Section 471.425, the Consultant shall pay all sub-contractors for sub-contractor's undisputed, completed work, within ten (10) days after the Consultant has received payment from the MPRB.

6 Assignment or Transfer of Interest

The Consultant shall not assign any interest in the Contract, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of the MPRB. The Consultant shall not subcontract any services under this Contract without prior written approval of the MPRB Department Contract Manager designated herein.

7 General Compliance

The Consultant agrees to comply with all applicable Federal, State and local laws and regulations governing funds provided under this Contract.

8 Performance Monitoring

The MPRB will monitor the performance of the Consultant against goals and performance standards required herein. Substandard performance as determined by the MPRB will constitute non-compliance with this Contract. If action to correct such substandard performance is not taken by the Consultant within a reasonable period of time to cure such substandard performance after being notified by the MPRB, Contract termination procedures will be initiated. All work submitted by Consultant shall be subject to the approval and acceptance by the MPRB Department Contract Manager designated herein. The MPRB Department Contract Manager designated herein shall review each portion of the work when certified as complete and submitted by the Consultant and shall inform the Consultant of any apparent deficiencies, defects, or incomplete work, at any stage of the project.

9 Prior Uncured Defaults

Pursuant to Section 18.115 of the City's Code of Ordinances, the MPRB may not contract with persons or entities that have defaulted under a previous contract or agreement with the

MPRB and have failed to cure the default.

10 Independent Consultant

Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Consultant shall at all times remain an independent Consultant with respect to the work and/or services to be performed under this Contract. Any and all employees of Consultant or other persons engaged in the performance of any work or services required by Consultant under this Contract shall be considered employees or sub-contractors of the Consultant only and not of the MPRB; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered or provided herein, shall be the sole obligation and responsibility of Consultant.

11 Accounting Standards

The Consultant agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices (GAAP) to properly account for expenses incurred under this Contract.

12 Retention of Records

The Consultant shall retain all records pertinent to expenditures incurred under this Contract for a period of six years commencing after the later of contract close-out or resolution of all audit findings. Records for non-expendable property acquired with funds under this Contract shall be retained for six years after final disposition of such property.

13 Audit Requirements for Cloud-Based Storage of MPRB Data

If the Consultant's services include the storage of MPRB data using a cloud based solution, then the Consultant agrees to secure the data as though it were "private data" as defined in Minnesota Statutes, Chapter 13. The Consultant shall provide the MPRB with the annual copy of the Federal Standards for the Statement on Standards for Attestation Engagements (SSAE) No. 16 or the International Standard on Assurance Engagements (ISAE) No. 3402. The Consultant agrees to provide a .pdf copy to the MPRB's Contract Manager, upon the Consultant's receipt of the audit results.

14 Data Practices

Consultant, its officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), the Health Insurance Portability and Accountability Act and

implementing regulations, if applicable, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality. If Consultant creates, collects, receives, stores, uses, maintains or disseminates data because it performs functions of the MPRB pursuant to this Contract, then Consultant must comply with the requirements of the MGDPA as if it were a government entity, and may be held liable under the MGDPA for noncompliance. Consultant agrees to defend, indemnify and hold harmless the MPRB, its officials, officers, agents, employees, and volunteers from any claims resulting from Consultant's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this section. Consultant agrees to promptly notify the MPRB if it becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA. The terms of this section shall survive the cancellation or termination of this Contract.

15 Inspection of Records

Pursuant to Minnesota Statutes Section 16C.05, all Consultant payroll and expense records with respect to any matters covered by this Contract shall be made available to the MPRB and the State of Minnesota Office of State Auditor or their designees upon written notice, at any time during normal business hours, as often as the MPRB deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

16 Living Wage Ordinance

The Consultant may be required to comply with the "[Minneapolis Living Wage and Responsible Public Spending Ordinance](http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert_255695.pdf)" (http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert_255695.pdf), Chapter 38 of the City's Code of Ordinances (the "Ordinance"). Unless otherwise exempt from the Ordinance as provided in Section 38.40 (c), any MPRB contract for services valued at \$100,000 or more or any MPRB financial assistance or subsidy valued at \$100,000 or more will be subject to the Ordinance's requirement that the Consultant and its sub-contractors pay their employees a "living wage" as defined and provided for in the Ordinance.

17 Applicable Law

The laws of the State of Minnesota shall govern all interpretations of this Contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the Consultant.

18 Conflict and Priority

If this Contract was awarded by RFP and in the event that a conflict is found between provisions in this Contract, the Consultant's Proposal or the MPRB's Request for Proposals, the provisions in the following rank order shall take precedence: 1) Contract; 2) Proposal; and last 3) Request for Proposals (only for Contracts awarded using RFP).

19 Conflict of Interest/Code of Ethics

Pursuant to Section PB 1-6 of the MPRB's Code of Ordinances, both the MPRB and the Consultant are required to comply with the City's Code of Ethics. Chapter 15 of the Code of Ordinances requires MPRB officials and the Consultant to avoid any situation that may give rise to a "conflict of interest." A "conflict of interest" will arise if Consultant represents any other party or other client whose interests are adverse to the interests of the MPRB.

As it applies to the Consultant, the City's Code of Ethics will also apply to the Consultant in its role as an "interested person" since Consultant has a direct financial interest in this Contract. The City's Code of Ethics prevents "interested persons" from giving certain gifts to employees and elected officials.

20 Termination, Default and Remedies

The MPRB may cancel this Contract for any reason without cause upon thirty (30) days' written notice. Both the MPRB and the Consultant may terminate this Contract upon sixty (60) days' notice if either party fails to fulfill its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of this Contract. The non-defaulting party shall have the right to terminate this Contract, if the default has not been cured after ten (10) days' written notice or such other reasonable time period to cure the default has been provided. If termination shall be without cause, the MPRB shall pay the Consultant all compensation earned to the date of termination. If the termination shall be for breach of this Contract by the Consultant, the MPRB shall pay the Consultant all compensation earned prior to the date of termination minus any damages and costs incurred by the MPRB as a result of the breach. If the Contract is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Consultant under this Contract shall, at the option of the MPRB, become the property of the MPRB, and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, the Consultant shall not be relieved of liability to the MPRB for damages sustained by the MPRB as a result of any breach of this Contract by the Consultant. The MPRB may, in such event, withhold payments due to the Consultant for the purpose of set-off until such time as the exact amount of damages due the MPRB is determined. The rights or remedies provided for herein shall not limit the MPRB, in case of any default by the Consultant, from asserting any other right or remedy allowed by law, equity, or by statute. The Consultant has not waived any rights or defenses in seeking any amounts withheld by the MPRB or any damages due the Consultant.

21 Ownership of Materials

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from this Contract shall become the property of the MPRB upon the MPRB's payment for and final approval of the final report or upon payment and request by the MPRB at any time before then. The MPRB at its own risk may use, extend, or enlarge any document produced under this Contract without the consent, permission of, or further compensation to the Consultant.

22 Intellectual Property

All Work produced by the Consultant under this Contract is classified as "work for hire" and upon payment by the MPRB to the Consultant will be the exclusive property of the MPRB and will be surrendered to the MPRB immediately upon completion, expiration, or cancellation of this Contract. "Work" covered includes all reports, notes, studies, photographs, designs, drawings, specifications, materials, tapes or other media and any databases established to store or retain the Work. The Consultant may retain a copy of the Work for its files in order to engage in future consultations with the MPRB and to satisfy professional records retention standards. The Consultant represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

Each party acknowledges and agrees that each party is the sole and exclusive owner of all right, title, and interest in and to its services, products, software, source and object code, specifications, designs, techniques, concepts, improvements, discoveries and inventions including all intellectual property rights thereto, including without limitations any modifications, improvements, or derivative works thereof, created prior to, or independently, during the term of this Contract. This Contract does not affect the ownership of each party's pre-existing, intellectual property. Each party further acknowledges that it acquires no rights under this Contract to the other party's pre-existing intellectual property, other than any limited right explicitly granted in this Contract.

23 Equal Benefits Ordinance

Minneapolis Code of Ordinances, Section 18.200, relating to equal benefits for domestic partners, applies to each Consultant and sub-contractor with 21 or more employees that enters into a "contract", as defined by the ordinance that exceeds \$100,000. The categories to which the ordinance applies are personal services; the sale or purchase of supplies, materials, equipment or the rental thereof; and the construction, alteration, repair or maintenance of personal property. The categories to which the ordinance does not apply include real property and development contracts.

Please be aware that if a "contract", as defined by the ordinance, initially does not exceed \$100,000, but is later modified so the Contract does exceed \$100,000, the ordinance will then apply to the Contract. A complete text of the ordinance is available at:

http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert_261694.pdf . It is the Consultant's and sub-contractor's responsibility to review and understand the requirements and applicability of this ordinance.

24 MPRB Ownership and Use of Data

The MPRB has adopted an Open Data Policy ("Policy"). The MPRB owns all Data Sets as part of its compliance with this Policy. Data Sets means statistical or factual information: (a) contained in structural data sets; and (b) regularly created or maintained by or on behalf of the MPRB or a MPRB department which supports or contributes to the delivery of services, programs, and functions. The MPRB shall not only retain ownership of all MPRB Data Sets, but also all information or data created through the MPRB's use of the software and /or software applications licensed by the Consultant (or any subcontractor of sub-consultant of the Consultant) to the MPRB.

The MPRB shall also retain the right to publish all data, information and Data Sets independently of this Contract with the Consultant and any of Consultant's subcontractors or sub-consultants involved in providing the Services, using whatever means the MPRB deems appropriate.

The MPRB shall have the right to access all data, regardless of which party created the content and for whatever purpose it was created. The Consultant shall provide bulk extracts that meet the public release criteria for use in and within an open data solution. The Consultant shall permit and allow free access to MPRB information and Data Sets by using a method that is automatic and repeatable. The Data Sets shall permit classification at the field level in order to exclude certain data.

25 Cardholder Data and Security Standards

Should the Consultant collect revenue on behalf of the MPRB through the acceptance of credit cards offered by cardholders to pay for services offered under the terms of this Contract, then Consultant represents and acknowledges that the Consultant will comply with Payment Card Industry (PCI) regulatory standards including the Data Security Standards (DSS). Consultant represents that it will protect cardholder data. Consultant will be annually certified as a PCI compliant service provider and agrees to provide evidence of said certification to the MPRB upon request. Consultant agrees at reasonable times to provide to the MPRB or to its assigns, the audit rights contained in item 15 hereof for all physical locations, systems or networks that process credit cards on behalf of the MPRB. Consultant also agrees to provide written notice to the MPRB of any breach of a system owned, operated or maintained by the Consultant that contains cardholder data or information.

26 Small & Underutilized Business Program (SUBP) Requirements

Consultant must comply with the Small & Underutilized Business Program (SUBP), as detailed in Chapter 423 of the Minneapolis Code of Ordinances. The SUBP Ordinance applies to any contract for the provision of goods and services in excess of one hundred thousand dollars (\$100,000).

27 Miscellaneous Provisions

- 1. Successors and Assigns** – This Contract shall be binding upon and inure to the benefit of the successors and assigns of the MPRB and of the Consultant.
- 2. Severability** – If any provision of this Contract is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Contract shall be construed and enforced as if such invalid or unenforceable provision had not been included.
- 3. Amendments** – This Contract may only be modified or changed by written amendment signed by authorized representatives of the MPRB and the Consultant.
- 4. Waiver** – Failure to enforce any provision of this Contract does not affect the rights of the parties to enforce such provision in another circumstance. Neither does it affect the rights of the parties to enforce any other provision of this Contract at any time.
- 5. Entirety of Contract** – This Contract and the Attachments/Exhibits thereto, constitute the entire and exclusive Contract of the parties.
- 6. Standard of Care** – The standard of care for all Consultant services performed to execute the work as provided in the attached Scope of Services, shall be the case and skill ordinarily used by members of the Consultant’s profession practicing under similar conditions at the same time and locality of the project. If the parties agree upon specific performance standards for any aspect of the work performed, which standards are set forth in the Contract, the Consultant services shall be performed to achieve such standards.