

## City of Minneapolis

### Standard Agreement Form

(For Professional Services Contracts under \$50,000 – Non-grant Funded)

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

City Department entering into contract:  
Contractor's SSN or Federal ID Number:

#### I. OPENING PARAGRAPH

THIS CONTRACT is made between the City of Minneapolis, Minnesota, a home rule charter city, referred to as the City and **KPMG LLP**, referred to as the Contractor, for **Audit Committee Training** services to be provided under the terms of this agreement (the "Contract").

#### II. SCOPE OF AGREEMENT

Contractor agrees to perform the following services for the City:

- Conduct interviews, take notes, and use feedback from Audit Committee members, the City Coordinator, City Clerk, and Internal Audit Director for purposes of developing tailored training and workshop materials aligning with the published agenda provided by the City.
- Prepare materials, under the supervision and review of the Audit Committee Chair and other City stakeholders as required, for purposes of fulfilling desired workshop goals including coverage of:
  1. Minneapolis Audit Committee
    - a. Roles and responsibilities of the Minneapolis Audit Committee
    - b. Defining success for Audit Committee performance
  2. Internal Audit
    - a. Roles and responsibilities of Internal Audit
    - b. Defining success for Internal Audit performance
- Conduct and facilitate a three hour workshop with members of the Audit Committee, the City Clerk, Internal Audit Director, and City Coordinator.
- Conduct and facilitate a one hour workshop with department leaders of the City, leveraging the materials developed referenced above.

#### III. COMPENSATION

Contractor shall be compensated at rate of **\$288 per hour**. The total compensation under this Contract for all services (including reimbursable expenses) shall not exceed **\$15,000**. Contractor shall submit itemized invoices for services rendered.

## **EXPENSE REIMBURSEMENT**

“Eligible reimbursable expenses” shall be paid upon submission of itemized invoice to the person signing this Contract. The City shall only pay for the following eligible reimbursable expenses – copying, printing, postage and shipping and travel as provided below - if reasonably and necessarily incurred. Any expenses that are anticipated to be over \$100 and any reimbursement for travel outside of the Minneapolis-St. Paul metropolitan area must be approved in advance by the Contract Manager. All travel must be conducted in accordance with the City’s Contractor Travel Reimbursement Conditions which can be found at:

<http://www.ci.minneapolis.mn.us/policies/ContractorTravelReimbursementConditions.pdf> All reimbursable expenses over \$100 should be listed as an attachment.

**Note: The sum total for Compensation and eligible reimbursable expenses under this Standard Agreement form shall not exceed Fifty Thousand (\$50,000) dollars.**

## **IV. EFFECTIVE DATE AND TERMINATION DATE**

This Contract shall be in full force and effect from **June 29** through **August 31, 2012**, unless otherwise extended by the City or terminated earlier under Paragraph XV, Cancellation, Default and Remedies.

## **V. SUBSTITUTIONS AND ASSIGNMENTS**

Services by the Contractor will be performed by the following person(s):

**Ryan Verstraete, Director, Advisory Services**  
**Phil Bach, Director, Advisory Services**  
**Kreg Weigand, Partner, Advisory Services**

Upon approval by the City, the Contractor may substitute other persons to perform the services. If substitution is permitted by the City, the Contractor shall furnish information to the person signing this Contract to allow proper review of the qualifications of the substituted person. No assignment of this Contract shall be permitted without the written amendment signed by the City and the Contractor.

## **VI. CONTRACT ADMINISTRATION**

All provisions of this Contract shall be coordinated and administered by the person identified in Paragraph XVI.

## **VII. AMENDMENTS**

No amendments may be made to this Contract after signing by the parties, except for extensions of time, increases in compensation or increases or reduction of the services to be performed so long as the limit of \$50,000 is not exceeded. All amendments shall be in writing, signed by the City and the Contractor. If that amount is to exceed \$50,000, the amendment must be approved by the Mayor and City Council by formal Council action.

## **VIII. INDEPENDENT CONTRACTOR**

The Contractor and its employees shall not be an employee of the City. It is agreed that the Contractor and its employees will act as an independent Contractor and acquire no rights to tenure, workers' compensation benefits, unemployment compensation benefits, medical and hospital benefits, sick and vacation leave, severance pay, pension benefits or other rights or benefits offered to employees of the City, its departments or agencies. The parties agree that the Contractor and its employees will not act as the agent, representative or employee of the City.

## **IX. CONTRACTOR'S INSURANCE**

If any insurance is required under this Contract, the Contractor shall maintain that insurance identified in Exhibit A which is attached and made part of this Contract.

## **X. DATA PRACTICES**

The Contractor agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Contractor will immediately report to the City any requests from third parties for information relating to this Contract. The City agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the City, its officers, and employees harmless from any claims resulting from the Contractor's unlawful disclosure or use of data protected under state and federal laws.

## **XI. COMPLIANCE WITH THE LAW**

Contractor agrees to abide by the requirements and regulations of The Americans with Disabilities Act of 1990 (ADA), the Minnesota Human Rights Act (Minn. Stat. C.363A), the Minneapolis Civil Rights Ordinance (Ch. 139), and Title VII of the Civil Rights Act of 1964. These laws deal with discrimination based on race, gender, disability, religion and with sexual harassment. In the event the Contractor has questions concerning these requirements, the City agrees to promptly supply all necessary clarifications. Violation of any of the above laws can lead to termination of this Contract.

## **XII. AUDITS**

The Contractor agrees that the City, the State Auditor or any of their duly authorized representatives, at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt and transcribe any timekeeping and expense records that are directly relevant and involve transactions relating to this Contract.

## **XIII. APPLICABLE LAW**

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

## **XIV. LIABILITY AND INDEMNITY**

- a. The City agrees to defend, indemnify and hold harmless the Contractor against any and all claims, liability, loss, damage or expense arising under the provisions of this Contract and caused by the negligent acts or omissions of the City or its employees.
- b. The Contractor agrees to defend, indemnify and hold harmless the City against any and all claims, liability, loss, damage or expense arising under the provisions of this Contract and caused by the negligent acts or omissions of the Contractor or its employees, agents and any subcontractors.

## **XV. CANCELLATION, DEFAULT AND REMEDIES**

Either party to this Contract may cancel this Contract upon thirty (30) days written notice, except in instances where the Contractor fails to fulfill its obligations under this Contract in a proper and timely manner, or otherwise violates the terms of this Contract, the City has the right to terminate this Contract, if the Contractor has not cured the default after receiving seven (7) days written notice of the default.

Notwithstanding section XIV or this section XV, the Contractor shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Contract by the Contractor. The City may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided here shall not limit the City, in case of any default, error or omission, by the Contractor, from asserting any other right or remedy allowed by law, equity, or by statute. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the City under law.

**XVI. NOTICES**

Any notice or demand authorized or required under this Contract shall be in writing and shall be sent by certified mail to the other party as follows:

To the Contractor:

**Ryan Verstraete**  
**KPMG LLP**  
**4200 Wells Fargo Center**  
**90 South Seventh Street**  
**Minneapolis, MN 55402**

To the City:

**Casey Joe Carl, Department Head**  
**Office of City Clerk**  
**City of Minneapolis**  
**350 South 5<sup>th</sup> Street, Room 304**  
**Minneapolis, MN 55415-1383**

**(same as Department Head), Contract Manager**

## **XVII. INTELLECTUAL PROPERTY**

Unless the Contractor is subject to one or more of the intellectual property provisions in this section of the Contract, the City owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in any "Work" created, in progress, produced or completed and paid by this Contract. Work covered includes inventions, improvements, discoveries, databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, or other media.

All Work under this Contract will be the exclusive property of the City and will be surrendered to the City immediately upon completion, expiration, or cancellation of this Contract. The Contractor represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

This section may be modified by attaching a "service licensing agreement" when the Contractor is providing services from a proprietary system for which the Contractor has proprietary rights.

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.

## **XVIII. BILLBOARD ADVERTISING**

Ordinance 544.120 prohibits the use of City or City-derived funds to pay for billboard advertising as a part of a City project or undertaking.

## **XIX. CONFLICT OF INTEREST/CODE OF ETHICS**

By signing this Contract, the Contractor agrees that it will not represent any other party or other client which may create a conflict of interest in its representation with the City. If the Contractor is unclear if a conflict of interest exists, the Contractor will immediately contact the City representative identified as the Contract Manager in this Contract and ask for an interpretation.

In so far as it relates to its relationship with the City created by this Contract, the Contractor agrees to comply with the City's Code of Ethics, as codified at Minneapolis

Code of Ordinances, Title 2, Chapter 15. Contractor certifies that to the best of its knowledge all City employees and officers participating in this Contract have also complied with Title 2, Chapter 15 of that Ordinance as it related to their relationships between the City and the Contractor created by this Contract. Compliance with the Code of Ethics by the Contractor will be in its potential role as an "interested person," "lobbyist," or "lobbyist principal" and not as a "local official" or "local employee" (except to the extent that a Contractor representative or member of its board of directors is already a City official or employee). It is agreed by the Parties that any violation of the Code of Ethics constitutes grounds for the City to void this Contract. All questions relative to this section shall be referred to the City and shall be promptly answered.

## **XX. ADDITIONAL PROVISIONS**

1. **Limitation of Liability** - Notwithstanding anything else herein to the contrary, the liability of the Contractor on account of any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services performed under the Contract shall be limited to the amount of fees paid or owing to Contractor under the Contract. In no event shall Contractor be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). This section shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, tort (including but not limited to negligence) or otherwise and shall survive termination or expiration.
2. **Management Decisions** – The City acknowledges and agrees that Contractor’s services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the City. The Contractor will not perform management functions or make management decisions for the City.
3. **Third Party Usage** - Any advice, recommendations, information, deliverables or other work product provided to the City under this Contract is for the sole use of the City, and is not intended to be, and may not be, relied upon by any third party, and all advice, recommendations, information, deliverables, or other work product may be marked to so indicate. Except for disclosures that are required by law or that are expressly permitted by this Contract, the City will not disclose or permit access to such advice, recommendations, information, deliverables, or other work product to any third party without the Contractor’s prior written consent.
4. **California Accountancy Act** – For engagements where services will be provided by the Contractor through offices located in California, the City acknowledges that certain of Contractor’s personnel who may be considered “owners” under the California Accountancy Act and implementing regulations (California Business and Professions Code section 5079(a); 16 Cal. Code Regs. sections 51 and 51.1) and who may provide services in connection with this engagement, may not be licensed as certified public accountants under the laws of any of the various states.
5. **Electronic Communications** – Contractor may communicate with the City by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. The City accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). The City agrees that the final hardcopy version of a document, including a deliverable, or other written communication that Contractor transmits to the City shall supersede any previous versions transmitted electronically by Contractor to the City unless no such hard copy is transmitted.

6. Active Spreadsheets and Electronic Files – Contractor may use models, electronic files, and spreadsheets with embedded macros created by Contractor to assist Contractor in providing the services under the Contract. If the City requests a working copy of any such model, electronic file or spreadsheet, Contractor may, at its discretion, make such item available to the City for the City’s internal use only and such item shall be considered a deliverable (subject to the requirements herein); provided that the City is responsible for obtaining the right to use any third party products necessary to use or operate such item.
7. Use of Affiliates and Third Party Service Providers – The City acknowledges that Contractor uses third party service providers within and without the United States to provide at Contractor’s direction administrative and clerical services to Contractor.
8. Expenses - The City acknowledges that Contractor’s policy is to bill the amount incurred at the time the good or service is purchased. Subsequent volume rebates or other incentive payments from a vendor relating to such expenses will not be credited to the City. Instead, the Contractor applies such payments to reduce its overhead costs, which costs are taken into account in determining standard billing rates and certain transaction charges that may be charged to clients.

**XXI.** The parties being in Agreement, have caused this Contract to be signed as follows:

**FOR THE CONTRACTOR:**

By \_\_\_\_\_

Its

*By signing this agreement, I represent that I have the authority to enter into and bind the Contractor to this agreement.*

**FOR THE CITY:**

By \_\_\_\_\_

Its

*By signing this agreement, I represent that I have the authority to enter into and bind the City to this agreement.*

**Exhibit A- Standard Agreement Insurance Form (Grant funded and Non-Grant funded)**

The following are the insurance requirements for the Contractor. Please fill in a-e. Contractor shall **check one box under each insurance area and sign at the bottom**. Please note: **No changes or additions can be made to this form** other than indicating self-insurance status (if applicable, also attach a letter that outlines self-insurance coverage).

a) 1. Worker's Compensation insurance that meets the statutory obligations.

**Attached is certificate evidencing above insurance coverage in force as of the Contract start date.**

**MN Statute Chapter 176 does not apply because Contractor has no employees and will not have any during the life of the Contract.**

2. Workers Compensation insurance for non-employees providing services under this Contract (i.e., subcontractors). **Contractors are assuming full Workers Compensation coverage for uninsured sub-contractors.**

**Attached is certificate evidencing Workers Compensation insurance coverage in force as of the Contract start date (either umbrella coverage by Contractor or separate coverage by non-employees).**

**Non-employees such as subcontractors will not provide any services under this Contract.**

b) Commercial General Liability insurance. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured.

**Attached is certificate evidencing above insurance coverage in force as of the Contract start date.**

**Contractor assumes full responsibility for any and all damages that occur as a result of this Contract.**

c) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles.

**Attached is certificate evidencing above insurance coverage in force as of the Contract start date.**

**Contractor's personal auto liability insurance coverage addresses the risk. Attached is a letter from insurance agent stating that personal automobile insurance policy covers business usage of all automobile(s) that will be used during the life of this Contract.**

**Contractor will not drive any automobiles while performing services under this Contract.**

d) Professional Liability Insurance providing coverage for the claims that arise from the errors of Contractor or its consultants, omissions of Contractor or its consultants, failure to render a professional service by Contractor or its consultants, or the negligent rendering of the professional service by Contractor or its consultants. The insurance policy must provide the protection stated for two years after completion of work.

**Attached is certificate evidencing above insurance coverage in force as of the Contract start date.**

**Contractors providing service under this Contract who do not carry professional liability insurance agree to assume full responsibility for any and all damages that occur as a result of Contractor's acts, errors or omissions.**

**Contractor Name (printed)**

**Contractor Authorized Signature \_\_\_\_\_ Date**

