

CHEMEKETA COMMUNITY COLLEGE'S GENERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

(Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and Providers
of Related Services)

THE FOLLOWING GENERAL TERMS AND CONDITIONS SHALL APPLY TO ALL PROFESSIONAL SERVICES SUPPLIED TO
THE COLLEGE UNLESS SPECIFICALLY PROVIDED OTHERWISE ON THE FRONT OF THIS PURCHASE ORDER:

1. DEFINITIONS:

"Contract" means the entire written agreement between the parties including, but not limited to: the Request for Quotation; the Invitation to Bid or Request for Proposal and its specifications, terms and conditions, solicitation instructions, solicitation addenda and contract amendments, if any; the purchase order or price agreement document and its insurance and supplementary contract conditions.

"Consultant" means a person or organization with which the College has contracted for Professional Services.

"College" means Chemeketa Community College, Chemeketa Community College District or Chemeketa Community College Service District established under ORS chapter 341.

"Standard of Care" means the performance of the Consultant shall be in accord with the professional skill, care and standards of other professionals performing similar services under similar conditions.

"Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports and other materials, that Consultant is required to deliver to the College under this Contract, whether completed, partially completed or in draft form.

2. STANDARD AND SUPPLEMENTARY CONTRACT TERMS AND CONDITIONS:

The terms and conditions contained herein are standard to Chemeketa Community College contracts for Professional Services. There may also be special terms and conditions in an Invitation to Bid or Request for Proposal which apply only to this contract.

3. CONSULTANT'S RESPONSIBILITIES:

By execution of this Contract, the Consultant agrees that:

The Consultant is an experienced individual or firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract to design and administer a project having this scope and complexity; and will perform such services pursuant to the Standard of Care as defined in Section 1 above.

The Consultant either is, or will in a manner consistent with the Standard of Care as defined in Section 1 above, become familiar with current laws, rules, and regulations which are applicable to the design and construction of the Project. All drawings, specifications, deliverables and other documents prepared by the Consultant shall be prepared in accordance with this standard of care in an effort to accurately reflect, fully comply with and incorporate all such laws, rules, and regulations.

The Consultant shall perform the services diligently, without delay and punctually fulfill requirements herein, consistent with any schedule for
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the performance of Consultant's services set forth in this contract. The passage of the Contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance. *Time is of the essence in the performance of this Contract.*

4. INSURANCE AND INDEMNITY:

Consultant shall maintain in effect for the duration of this Contract, or any other time periods required herein, the insurance required by this Contract, as set forth in the "Chemeketa Community College Insurance & Supplementary Contract Conditions for Standard Professional Services – (Attachment INS/AE)," located at <http://www.chemeketa.edu/community-partners/business-opportunities/procurement-services/>

5. HOLD HARMLESS:

The Consultant shall indemnify, defend, and hold harmless Chemeketa Community College officers, board members, agents, employees and volunteers from any claims, actions, liability or cost, including attorneys' fees or cost of defense arising out of or in any way relating to the work performed under this agreement, and arising from the sole or joint negligence of the Consultant.

6. OWNERSHIP OF WORK PRODUCT:

All Work Product created by Consultant pursuant to this Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire" or an employment to invent, shall be the exclusive property of the Owner. The College and Consultant agree that such original works of authorship are "work made for hire" of which the College is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to this Contract is not "work made for hire", Consultant hereby irrevocably assigns to the College any and all of its rights, title, and interest in all original Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon the College reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in the College. Consultant forever waives any and all rights relating to original Work Product created pursuant to this Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

7. BREACH OF CONTRACT:

In the event of a breach by the Consultant of any of the provisions of this Contract, the College reserves the right to cancel and terminate this Contract forthwith upon giving oral or written notice to the Consultant. Consultant shall be liable for any and all damages suffered by the College as a result of Consultant's breach of contract including, but not limited to, incidental and consequential damages. In the event of

repeated breach of public and/or private contracts, Consultant shall be subject to disqualification on College contracts, as provided in ORS chapter 279C.440 and OAR chapter 137.049.370.

8. TERMINATION:

This contract may be terminated by mutual consent of both parties by written mutual consent of the parties. The College may, at its sole discretion, terminate this Contract, in whole or in part, by written notice to Consultant specifying the termination date of the Contract. Upon receipt of this written notice, Consultant shall immediately cease all activities related to the services provided under this Contract.

In the event of termination pursuant to this Section Consultant's sole remedy shall be a claim for the sum designated for accomplishing the services multiplied by the percentage of services completed plus Consultant's reasonable Contract close-out costs, less previous amounts paid and any claim(s) which College has against Consultant.

9. AMENDMENTS:

No agreement or understanding to modify this Contract shall be binding upon the College unless in writing and signed by the College's authorized agent. All specifications, drawings, and data submitted to the Consultant for this contract are hereby incorporated and made a part hereof. No alternation in any of the terms and conditions will be effective without the prior written consent of the College's Procurement Services.

10. NON-WAIVER OF RIGHTS:

No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

11. SEVERABILITY:

If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with the law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held invalid.

12. COMPLIANCE WITH LAWS:

The Consultant certifies that in performing this contract it will comply with all applicable provisions of the federal, state and local laws, regulations, rules, orders, codes, and ordinances applicable to the provision of goods and/or services under this Contract, including, without limitation, the provisions of ORS 279A, 279B, 279C and the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and the 2008 amendment to the Americans with Disabilities Act; (iv) the Age Discrimination Act; ORS 659.800 et al, and all amendments of regulations and administrative rules established pursuant to those laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

Consultant agrees not to discriminate against any client, employee, or applicant for employment or for services, because of race, religion, color, national origin, ethnicity, sex, sexual orientation or identity, veterans status, pregnancy or related conditions, disability, or age with regard to, but not limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; selection for training; rendition of services. It is further understood that any Consultant who is in violation of this clause may be barred forthwith from receiving awards of any purchase order, purchase agreement,

contract, or similar acquisition instrument, from the College unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such acts is unlikely.

13. CONFLICTS OF INTEREST:

Except with College's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

Consultant may accept nothing of value either in the present or in the future from any source except the College in connection with the performance of duties under this agreement.

14. AWARD TO FOREIGN CONSULTANT:

If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State's Corporation Division all information required by those agencies relative to this Contract. Consultant shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to entering into this Contract.

15. LAWS GOVERNING:

This contract shall be governed by and construed according to the laws of the State of Oregon. Venue for any action related to this agreement shall be in the Circuit Court for the County of Marion, Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Consultant hereby consents to the in personam jurisdiction of said courts.

16. PAYMENT:

All invoices shall be addressed to the Project Manager listed in "Ship to" on the Purchase Order, Chemeketa Community College, PO Box 14007, Salem, Oregon 97309, as indicated on the front of this purchase order and must include Consultant's name and phone number, purchase order number, and a detailed list the Professional Services provided. All payments to the Consultant shall be remitted by mail unless previous arrangements for ACH credit/direct deposit have been made. Please contact Accounts Payable @ 503-399-5014 for information on direct deposit. Please contact the Project Manager for your particular project for more information.

17. SUBCONTRACTING AND ASSIGNMENT:

Consultant shall not assign this contract, in whole or in part, or any right or obligation hereunder, without College's prior written approval. Consultant shall require any approved sub consultant or assignee to agree, as pertains to the portion subcontracted or assigned, to comply with all obligations specified in this contract. Notwithstanding College's approval of a sub consultant or assignee, Consultant shall remain obligated for full performance of this contract and College shall incur no obligation to any sub consultant or assignee. Furthermore, the provisions or monies due under this contract shall not be assignable.

18. INDEMNITY:

Consultant shall indemnify, defend, save, and hold harmless the College, its board members, officers, agents, employees and volunteers from claims, suits, or actions to the extent caused by the professionally negligent acts or omissions of the Consultant or its sub consultants, subcontractors, agents, or employees in performance of Professional Services under this Contract.

Notwithstanding the foregoing defense obligations set forth above, neither the Consultant nor any attorney engaged by the Consultant shall defend any claim in the name of Chemeketa Community College without the prior written consent of the College. The College may, at anytime at its election assume its own defense and settlement of any claims, in the event that it determines that the Consultant is prohibited from defending the College, that the Consultant is not adequately defending the College's interests, that an important governmental principle is at issue, or that it is in the best interests of the College to do so. The College reserves all rights to pursue any claims it may have against the Consultant if the College elects to assume its own defense

19. INDEPENDENT CONTRACTOR:

Consultant shall perform all services as an independent contractor. Although the College reserves the right to set the delivery schedule for the Professional Services to be performed and to evaluate the quality of the completed performance, the College can not and will not control the means and the manner of the Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the services under this contract.

The College will report all payments made to the Consultant, including any expenses, in accordance with Federal Internal Revenue and State of Oregon Department of Revenue regulations, and Consultant will be responsible for: (a) all applicable Federal or State taxes, and will not be eligible for any Social Security, Worker's Compensation, or Unemployment Insurance benefits except as a Self-Employed individual; (b) furnishing the College with a Request for Taxpayer Identification and Number and Certification (W9), or a Certificate of Foreign Status (W8), if a non-resident alien and exemption from federal withholding tax is claimed.

20. ACCESS TO RECORDS:

For not less than ten (10) years after the Contract's expiration, the College, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Consultant and the Sub-consultants which pertain to the Contract for the purpose of making audits, examination, excerpts, and transcripts. If for any reason, any part of this Contract, any Project-related consultant contract or any Project-related construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than seven (7) years or until all litigation is resolved, whichever is longer. Consultant shall provide the College and the other entities referenced above with full access to these records in preparation for and during litigation.

21. CONDUCT OF CONSULTANT'S EMPLOYEES/SUBCONTRACTORS:

The College retains the right to stop any activity and/or to require dismissal from the job site of any worker whose behavior does not comply, or gives the College reasonable suspicion to believe the worker's behavior does not comply, with pertinent Chemeketa Community College policy(ies), including but not limited to providing a respectful workplace, a harassment free workplace, and a drug and alcohol free workplace, or the activity is deemed hazardous to members of a user group, the public, or College facilities.

Chemeketa Community College is a college campus; however, there are a large number of minors on College property. Consultants are responsible and shall be held liable for any misconduct of their employees or subcontractors on College property. Consultants are encouraged to be mindful of any prior misconduct of its employees and/or subcontractors.

21. FORCE MAJEURE:

Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, war or other catastrophe which is beyond such

party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract. For the purposes of this clause "catastrophe" means an event that is so uncertain of occurrence that it cannot be reasonably anticipated and so severe in its effect as to suspend the normal operation of civil government in the affected area for a prolonged period of time.

Chemeketa Community College prohibits unlawful discrimination based on race, color, religion, national origin, sex, marital status, disability, protected veteran status, age, gender, gender identity, sexual orientation, pregnancy, whistleblowing, genetic information, domestic abuse victim, or any other status protected by federal, state, or local law in any area, activity or operation of the College. The College also prohibits retaliation against an individual for engaging in activity protected under this policy, and interfering with rights or privileges granted under federal, state or local laws.

Under College policies, equal opportunity for employment, admission, and participation in the College's programs, services, and activities will be extended to all persons, and the College will promote equal opportunity and treatment through application of its policies and other College efforts designed for that purpose.

Persons having questions or concerns about Title IX, which includes gender based discrimination, sexual harassment, sexual violence, interpersonal violence, and stalking, contact the Title IX coordinator at 503.365.4723, 4000 Lancaster Dr. NE, Salem, OR 97305, or <http://go.chemeketa.edu/titleix>. Individuals may also contact the U.S. Department of Education, Office for Civil Rights (OCR), 810 3rd Avenue #750, Seattle, WA 98104, 206.607.1600. Equal Employment Opportunity or Affirmative Action should contact the Affirmative Action Officer at 503.399.2537, 4000 Lancaster Dr NE, Salem OR 97305.

To request this publication in an alternative format, please call 503.399.5192.