# **Model Independent Contractor Agreement**

*League staff thoughtfully develops models for a city’s consideration. Models should be customized as appropriate for an individual city’s circumstances in consultation with the city’s attorney. Helpful background information on this model may be found in the* [*Employee or Independent Contractor Memo*](https://www.lmc.org/resources/employee-or-independent-contractor/)*.*

[Erase this icon and bold wording in your city Agreement, since they are guidance information]

 **This icon marks places where the city must customize the model. They offer additional provisions, optional language, or comments for your consideration. The icon, and language you do not wish to include, should be deleted from this model before use. This model is simply a starting point for a sample agreement cities can use when hiring an independent contractor to perform a service for the city. No single contract is appropriate for all circumstances. This agreement may not be appropriate for your city’s circumstances.**

**This agreement is a sample provided for information purposes only and may not be relied upon as legal advice. Please work with your City Attorney to customize the model for your city.** **LMCIT members can also submit their agreements for review to LMCIT’s free Contract Review Service.** **Please work with your city attorney to review all final contracts.**

This contract (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, between:

1. The City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Minnesota (the “City”), located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Minnesota; and
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (the “Contractor”), located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The City and the Contractor are referred to herein individually as a “Party” and collectively as the “Parties.”

1. Purpose. The purpose of this agreement is to set forth the terms and conditions under which the Contractor will provide certain services to the City.

2. Scope of Services. The Contractor agrees to perform the following services: [**describe the services to be provided in detail**], (the “Services.”)

**Alternate language: [The Contractor shall perform the work (the “Services) as described in Exhibit A to this Agreement which is incorporated herein by reference**.]

The Contractor shall not enter into any subcontracts for Services provided under this Agreement without the express written consent of the City.

The Contractor agrees to comply with all federal, state, and local laws and ordinances applicable to the Services to be performed under this Agreement, including all safety standards. The Contractor shall be solely and completely responsible for conditions of the job site, including the safety of all persons and property during the performance of the Services. The Contractor represents and warrants that it has the requisite training, skills, and experience necessary to provide the Services and is appropriately licensed by all applicable agencies and governmental entities and will perform the Services with reasonable care and skill.

The Contractor shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a contractor under similar circumstances.

The Contractor shall retain control over its employees, agents, servants, and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the Contractor shall not be deemed to be an agent of the City. The City will not pay additional compensation for Services that do not have prior written authorization.

3. Term. This Agreement shall be effective on the date hereof and shall continue, unless terminated sooner in accordance with the terms of this Agreement, until the Completion Date.

**Describe the term of the agreement. Services may be provided on a particular date or during a defined period of time.**

1. Start date: The Contractor shall commence the Services on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. Completion Date: The Contractor shall complete the Services by Time is of the essence. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
3. Key Dates: The Contractor shall complete the following Services by the specific dates below: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The City may terminate this Agreement for any reason at any time. Termination shall be effective upon ten (10) days’ written notice to the Contractor.

**Alternate language to provide termination for cause by the City: [If the Contractor refuses or fails to complete the Services, or to complete the Services in a manner satisfactory to the City, the City may, by written notice to the Contractor, give ten (10) days’ notice of its intention to terminate this Agreement. After such notice, the Contractor shall have ten (10) days to cure, to the satisfaction of the City. If the Contractor fails to cure, the City shall send the Contractor a written termination letter which shall be effective upon deposit in the United States mail to the Contractor.]**

The Contractor may terminate this Agreement if the City is in breach of any material obligation contained in this Agreement, which is not remedied by the City within ten (10) days of written notice.

The Parties may voluntarily terminate this Agreement at any time by mutual agreement.

In the event of termination, the City shall only be responsible to pay for the Services satisfactorily performed by the Contractor to the effective date of termination, as described in the final invoice to the City.

The term of this Agreement may be extended upon the written mutual consent of the Parties for such additional period as they deem appropriate upon the same terms and conditions as herein stated.

4. Compensation. As consideration for the provision of the Services, the City agrees to pay the Contractor as follows:  [**describe the dollar amount of compensation; compensation may be paid on an hourly basis, as a flat fee, or some other basis as agreed to by the parties; consider including “not to exceed” dollar language**.]

The Contractor shall submit a written invoice to the City upon completion of the Services.

**Alternate language for continuing services: [Contractor shall submit monthly payment invoices to the City after such Services have been completed.]**

Each invoice shall include in detail the hours worked and a description of the Services performed.

The invoice shall be submitted to the City Council for approval at the first City Council meeting following receipt of the invoice. The City shall pay Contractor within one (1) week after the invoice has been approved for payment by the City Council.

If the City objects to all or any portion of any invoice, the City shall notify the Contractor of the dispute with ten (10) days from the date of receipt and shall pay that portion of the invoice not in dispute. Any dispute shall be settled in accordance with Paragraph 8 of this Agreement.

5. Independent Contractor Relationship. It is expressly understood that the Contractor is an “independent contractor” and not an employee of the City. The Contractor shall have control over the manner in which the Services are performed under this Agreement. The Contractor shall supply, at its own expense, all materials, supplies, equipment and tools required to accomplish the Services contemplated by this Agreement. The Contractor shall not be entitled to any benefits from the City, including, without limitation, insurance benefits, sick and vacation leave, Earned Sick and Safe Time, workers’ compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture or agency relationship between the Parties.

6. Insurance Requirements. **(Note: Liability insurance requirements may be modified depending on the nature of the contract. Some contracts may require other types of insurance and higher coverage limits. Consult with your city attorney and LMCIT for specific insurance requirements).**

The Contractor, at its expense, shall procure and maintain in force for the duration of this Agreement the following minimum insurance coverages:

1. General Liability. The Contractor shall maintain Commercial General Liability Insurance in a minimum amount of $1,000,000 per occurrence; $2,000,000 annual aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. The City, including its elected and appointed officials, employees, and agents, shall be endorsed as additional insured.
2. Automobile Liability. If the Contractor operates a motor vehicle in performing the Services under this Agreement, the Contractor shall maintain Business Automobile Liability Insurance, including owned, hired, and non-owned automobiles, with a minimum combined single liability limit of $1,000,000 per occurrence.
3. Professional (Errors and Omissions) Liability Insurance. [**Only required for professional services provided by accountants, attorneys, engineers, etc**.] The Contractor shall maintain professional liability insurance for all claims the Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor’s professional services required under this Agreement. The Contractor is required to carry the following minimum limits: $1,000,000 per occurrence; $2,000,000 annual aggregate. The retroactive or prior acts date of such coverage shall not be after the effective date of this Agreement and the Contractor shall maintain such insurance for a period of at least two (2) years, following completion of the Services. If such insurance is discontinued, extended reporting period coverage must be obtained by the Contractor to fulfill this requirement.
4. Workers’ Compensation. The Contractor shall provide Workers’ Compensation insurance for all its employees in accordance with the statutory requirements of the State of Minnesota. The Contractor shall also carry Employers’ Liability Coverage with minimum limits as follows:

* $500,000 – Bodily Injury by Disease per employee
* $500,000 – Bodily Injury by Disease aggregate
* $500,000 – Bodily Injury by Accident

1. Additional Insurance Conditions.
2. The Contractor shall, prior to commencing the Services, deliver to the City a Certificate of Insurance as evidence that the above coverages are in full force and effect.
3. The insurance requirements may be met through any combination of primary and umbrella/excess insurance. The City must be endorsed as an additional insured on any umbrella/excess policy.
4. The Contractor’s policies shall be primary insurance and non-contributory to any other valid and collectible insurance available to the City with respect to any claim arising out of the Contractor’s performance under this Agreement.
5. The Contractor’s policies and Certificate of Insurance shall contain a provision that coverage afforded under the policies shall not be cancelled without at least thirty (30) days’ advanced written notice to the City, or ten (10) days’ written notice for non-payment of premium.

7. Indemnification. To the fullest extent permitted by law, the Contractor agrees to defend, indemnify and hold harmless the City, and its employees, officials, and agents from and against all claims, actions, damages, losses and expenses, including reasonable attorney fees, arising out of the Contractor’s negligence or the Contractor’s performance or failure to perform its obligations under this Agreement. The Contractor’s indemnification obligation shall apply to the Contractor’s subcontractor(s), or anyone directly or indirectly employed or hired by the Contractor, or anyone for whose acts the Contractor may be liable. The Contractor agrees this indemnity obligation shall survive the completion or termination of this Agreement.

8. Dispute Resolution. The City and the Contractor agree to informally negotiation all disputes related to this Agreement in good faith for a period of fifteen (15) days from the date of the notice of dispute prior to proceeding to file a lawsuit regarding the dispute.

9. General Provisions.

1. Entire Agreement. This Agreement supersedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties and contains the entire agreement.
2. Assignment. The Contractor may not assign this Agreement to any other person unless written consent is obtained from the City.
3. Amendments. Any modification or amendment to this Agreement shall require a written agreement signed by both Parties.
4. Nondiscrimination. In the hiring of employees to perform work under this Agreement, the Contractor shall not discriminate against any person by reason of any characteristic or classification protected by state or federal law.
5. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Minnesota.
6. Ownership of Documents. All reports, plans, specifications, data, maps, and other documents produced by the Contractor in the performance of Services under this Agreement shall be the property of the City. The City may use such information for its purposes. The City shall be the copyright owner.
7. Government Data/Privacy. The Contractor agrees to abide by the applicable provisions of the Minnesota Government Data Practices Act, Minnesota Statues, Chapter 13, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. The Contractor understands that all of the data created, collected, received, stored, used, maintained or disseminated by the Contractor in performing those functions that the City would perform is subject to the requirements of Chapter 13, and the Contractor must comply with those requirements as if it were a government entity. This does not create a duty on the part of the Contractor to provide the public with access to public data if the public data is available from the City, except as required by the terms of this Agreement.
8. Audits. Pursuant to Minn. Stat. Section 16C.05, subd. 5, the Contractor’s books, records, documents, and accounting procedures and practices that are relevant to this Agreement, are subject to examination by the City and either the Legislative Auditor or the State Auditor for a minimum of six years from the end of this Agreement.
9. Waiver. The waiver by either party of any breach or failure to comply with any provision of this Agreement by the other Party shall not be construed as or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.
10. Third Party Reliance. This Agreement is intended for the mutual benefit of Parties hereto and no third-party rights are intended or implied.
11. Notices. All notices and other communications pursuant to this Agreement must be in writing and must be given by registered or certified mail, postage prepaid, or delivered by hand at the addresses set forth below:

Notice to City: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notice to Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Force Majeure. Except for payment of sums due, neither Party shall be liable to the other or deemed in default under this Agreement, if and to the extent that Party’s performance is prevented by reason of f*orce majeure*. *“Force majeure”* includes war, an act of terrorism, a pandemic or epidemic, fire, earthquake, flood and other circumstances which are beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent.
2. Savings Clause. If a court finds any portion of this Agreement to be contrary to law, invalid, or unenforceable, the remainder of the Agreement will remain in full force and effect.
3. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, and which taken together shall be deemed to be one and the same document.

 **[Home Rule Charter cities should consult the city charter to determine contract signature requirements.]**

IN WITNESS WHEREOF, the Parties, have caused this Agreement to be approved on the date above.

**City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Minnesota**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its Mayor

And: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its Clerk

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Contractor**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_