

MOA ITD- Provide Personal Computing Devices and Accessories Agreement

[Insert Name of Company]

RFP 2018P033

DATE: [INSERT DATE HERE]



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MASTER SERVICES AGREEMENT

PURCHASE ORDER # [Insert Number]

CONTRACT FOR PROFESSIONAL SERVICES

WITH

[Insert Company Name]

In consideration of the mutual promises herein, ANCHORAGE and [Insert Company Name] agree as follows. The documents listed below are hereby incorporated by reference. In the event of an inconsistency or conflict between or among the provisions of this contract or change order, the inconsistency shall be resolved by giving precedence in the following order: Contract, Contract Schedules/Appendices, Contract Amendments, Response to RFP, and RFP.

This contract consists of:

Part I, Special Provisions; Part II, General Provisions; Appendix A: RFP, Appendix B: Vendor Proposal, Appendix C: Clarifications to Vendor Proposal, Appendix D: Pricing Schedule

Commented [TG1]: There may be other Appendices to the contract based on what is negotiated during contract negotiations

1.0: SPECIAL PROVISIONS

1.1: DEFINITIONS

In this contract:

- A. "Administrator" means the Information Technology Department Director or his/her designee.
- B. "Anchorage" means the Municipality of Anchorage.
- C. "Contractor" means [Insert Company Name]

1.2: SCOPE OF SERVICES

- A. The Contractor shall perform professional services in accordance with Appendices A, B, C, and D, which is attached hereto and incorporated in this section by reference.

Commented [TG2]: There may be other Appendices to the contract based on what is negotiated during contract negotiations



- B. Anchorage shall not allow any claim for services other than those described in this section. However, the Contractor may provide, at its own expense, any other services that are consistent with this contract.
- C. Individual purchase orders will be issued for each purchase against this contract. The Contractor shall perform the services required to fulfill each purchase order.

1.3: TIME FOR PERFORMANCE

- A. This contract becomes effective when signed on behalf of Anchorage.
- B. The Effective Date of the contract is the date it is signed by Anchorage.
- B. This Contract will remain in effect for **[insert length of time]** from the Effective Date of this agreement, plus **[insert number of one-year extension options]**.

1.4: COMPENSATION; METHOD OF PAYMENT

- A. Subject to the Contractor's satisfactory performance, Anchorage shall pay the Contractor a not to exceed amount of **[insert dollar amount]** annually for services in accordance with this section.
- B. Anchorage shall pay the Contractor in accordance with the pricing schedule attached as Appendix D unless otherwise set forth and incorporated herein by reference for goods and services actually performed under this contract.
- C. The Contractor is not entitled to any compensation under this contract, other than is expressly provided for in this section.
- D. As a condition of payment, the Contractor shall have paid all municipal taxes currently due and owing by the Contractor.

1.5: TERMINATION OF THE CONTRACTOR'S SERVICES

The Contractor's services under Section 1.2 may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Anchorage, provided that Anchorage notifies the Contractor in writing of its intent to terminate under this paragraph at least thirty (30) days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to cure the default within the later of (i) thirty (30) days after receiving the notice or (ii) in



the case of matters other than payment, that cannot reasonably be cured within 30 days, after a reasonable cure period has elapsed so long as contractor can demonstrate that it is making reasonable efforts to cure.

1.6: DUTIES UPON TERMINATION

- A. If Anchorage terminates the Contractor's services for convenience, Anchorage shall pay the Contractor for (i) for the services rendered and goods delivered prior to terminations (with services being pro-rated if applicable), and (ii) any stranded cost (including license fees, and subcontracts or other unrecoverable amounts and excluding costs of Contractor personnel) reasonably incurred or to be reasonably incurred by **insert company name** as a result of the termination. Payment under this subsection shall never exceed the total compensation allowable under Section 1.4. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Anchorage to the extent the final version thereof would become the property of Anchorage had the contract not been terminated.
- B. If the Contractor's services are terminated for cause, Anchorage shall pay the Contractor for the services rendered and goods delivered prior to the termination (with services being pro-rated if applicable) less any direct damages suffered by Anchorage because of the Contractor's failure to perform satisfactorily. Any finished or unfinished documents or materials prepared by the Contractor under this contract shall become the property of Anchorage at its option to the extent the final version thereof would become the property of Anchorage had the contract not been terminated.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under subsections A or B of this section, the Contractor shall remit the excess to the Administrator within thirty (30) days of receiving notice to do so.
- D. In a termination for material failure of the Contractor to perform, the Contractor shall not be entitled to any compensation under this section until the Contractor has delivered to the Administrator all documents, records, work product, materials and equipment owned by Anchorage and requested by the Administrator to the extent the final version of any documents (including records and work product) would become the property of Anchorage had the contract not been terminated.
- E. If the Contractor's services are terminated, for whatever reason, the Contractor shall not claim any compensation under this contract, other than that allowed under this section.
- F. Except as provided in this section, termination of the Contractor's services under Section 5 does not affect any other right or obligation of a party under this contract.

1.7: INSURANCE

- A. The Contractor shall maintain in good standing, for the entire period of the contact, the insurance described in subsection B of this section. Before rendering any services under this contract, the Contractor shall furnish the Administrator with a Certificate of Insurance in accordance with subsection B of this section in a form acceptable to the Risk Manager for Anchorage.

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Attachment 2

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- B. The Contractor shall provide the following insurance:
1. \$500,000 Employers Liability and Worker's Compensation as required by Alaska Law.
 2. Commercial Automobile Liability (or self-insurance) per occurrence in the amount of \$500,000 single limit to include: owned, hired, and non-owned.
 3. Commercial General Liability, including:
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations
 - \$1,000,000 Personal & Advertising Injury
 - \$1,000,000 Each Occurrence
 - \$5,000 Medical Payments
 4. As Appropriate – Professional Liability, IT Liability, or Cyber Security, Errors and Omissions in the amount of \$3,000,000. Cyber/Privacy Liability insurance coverage shall include, but not be limited to, claims involving invasion of privacy violations (including HIPPA), information theft, and release of private information. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses.

The Commercial General Liability and Professional Liability policies, if written on a "claims made basis," must have a two (2) year tail of coverage, or an unbroken continuation of coverage for two (2) years, from the completion of the contract requirements.
- C. Each policy of insurance required by this section shall provide for advance notice to the MOA/Contract Administrator prior to cancellation in accordance with the policy. IF the insurer does not notify the MOA upon policy cancellation it shall be the contractor's responsibility to notify the MOA of such cancellation.
- D. With the exception of Professional Liability each policy shall name the Municipality as an "Additional Insured" and the actual policy endorsements shall accompany each Certificate of Insurance.
- E. General Liability, Workers Compensation, and Automobile policies shall be endorsed to waive all rights of subrogation against the Municipality of Anchorage by reason of any payment made for claims under the above coverage. The policy endorsements shall accompany each Certificate of Insurance.
- F. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Municipality requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Municipality.
- G. All policies for general liability should state that the Contractor's insurance is primary and non-contributory to any insurance policies owned by the Municipality.
- H. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated above, and Contractor shall ensure that the Municipality is an additional insured on insurance required from subcontractors.



1.8: ASSIGNMENTS

Unless otherwise allowed by this contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this contract or any delegation of duties under this contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this contract shall give Anchorage the right to immediately terminate this contract without any liability for work performed.

1.9: OWNERSHIP; PUBLICATION, REPRODUCTION AND USE OF MATERIAL

Except as otherwise provided herein, all data, documents and materials produced by the Contractor and that are identified as deliverables to be provided to Anchorage under this contract shall be the property of Anchorage, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright. Anchorage shall not obtain any ownership, distributions, or publication rights of the underlying intellectual property such as trademarks, patents, and business processes which shall remain the property of [insert company name] or its vendors.

1.10: NOTICES

Any notice required pertaining to the subject matter of this contract shall be mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Anchorage: Municipality of Anchorage

 Information Technology Department

 P.O. Box 196650

 Anchorage, AK 99519 6650

Contractor: [Insert Company Name]

 [Insert Company Mailing Address]

Notices are effective upon the earlier of receipt, or five (5) days after proof of proper posting.



1.11: FORCE MAJEURE

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof, except with respect to a Party's payment obligations.
 - B. As used in this contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this contract, including without limitation:
 - 1. Strikes or work stoppages.
 - 2. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
-

1.12: FINANCIAL MANAGEMENT SYSTEM

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the contract;
 - B. Maintains separate accounts for all revenues and expenditures, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
 - C. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
 - D. Allocates administrative costs;
 - E. Minimizes the time between receipt of funds from Anchorage and their disbursement by the Contractor;
 - F. Provides accounting records supported by source documentation; and
 - G. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.
-

1.13: FUNDING REQUIREMENTS

In the event that any funding source for this contract should impose additional reporting or use requirements upon Anchorage, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice.

1.14: SUBCONTRACTS



The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefore.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval (not to be unreasonably withheld) by the Administrator before it is executed by the Contractor. Pricing may be omitted as confidential information from the subcontract that is submitted for review.
- C. Every subcontract in an amount exceeding \$1,000.00 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract the information required for contractor to comply with its reporting obligations under this contract.

2.0: GENERAL CONTRACT PROVISIONS

2.1: RELATIONSHIP OF PARTIES

The Contractor shall perform its obligations hereunder as an independent contractor of Anchorage. Anchorage may administer the contract and monitor the Contractor's compliance with its obligations hereunder. Anchorage shall not supervise or direct the Contractor other than as provided in this section.

2.2: NONDISCRIMINATION

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability", as that phrase is defined in the Americans With Disabilities Act of 1990. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, mental or physical disability, sexual orientation or gender identity. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to work on contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, sexual orientation or gender identity, or mental or physical disability.
- C. The Contractor shall comply with any and all reporting requirements of the Anchorage Office of Equal Employment Opportunity.



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- D. The Contractor shall include the provisions of subsections A through C of this section in every subcontract or purchase order under this contract, so as to be binding upon every such subcontractor or Contractor of the Contractor under this contract.
- E. The Contractor shall comply with all applicable federal, state and municipal laws concerning the prohibition of discrimination including, but not limited to Title 5 and Title 7, Chapter 7.50 of the Anchorage Municipal Code.

2.3: PERMITS, LAWS AND TAXES

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this contract. All actions taken by the Contractor under this contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this contract.



2.4: NON-WAIVER

The failure of either party at any time to enforce a provision of this contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

2.5: AMENDMENT

A. This contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this contract was executed.

B. For the purposes of any amendment modification or change to the terms and conditions of this contract, the only authorized representatives of the parties are:

Contractor: Insert Company Name & Authoritative Position or Approved Designee

Anchorage: Mayor, Municipal Manager or Approved Designee

C. Any attempt to amend, modify, or change this contract by either an unauthorized representative or unauthorized means shall be void.

2.6: JURISDICTION; CHOICE OF LAW

Any civil action arising from this contract shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage. The law of the State of Alaska shall govern the rights and obligations of the parties under this contract.

2.7: SEVERABILITY

Any provision of this contract deemed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the contract.

2.8: LITIGATION

THE PARTIES WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY CLAIM, ACTIONS, PROCEEDING, OR COUNTERCLAIM BY EITHER PARTY AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

2.9: INTEGRATION

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.



SECTION 9. LIABILITY.

The Contractor shall indemnify, defend, save and hold Anchorage (or Municipality) harmless from any and all claims, lawsuits or liability, including attorney fees and costs, allegedly arising out of loss, damage or injury to persons or property or from any wrongful or negligent act, error or omission of Contractor, Contractor's agents, employees, subcontractors or invitees, occurring during the course of, or as a result of the Contractor's, Contractor's agents, employees, contractors, subcontractors or invitees performance pursuant to this contract.

2.10: WARRANTY

Contractor warrants that the services performed under this Contract will meet the standards of skill and diligence normally employed by persons performing the same or similar services; that work will be free from errors and from defects in workmanship and materials; and that deliverables and Products shall conform to the specifications. Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost to Anchorage.

2.12: INSPECTION AND RETENTION OF RECORDS

The Contractor shall, at any time during normal business hours and no more frequently than once annually, make available to Anchorage, for examination, all of its records (excluding the Audit Exclusions below) with respect to all billing and civil rights matters covered by this contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this contract, to Anchorage, in such form and at such times as Anchorage may reasonably require. The Contractor shall permit Anchorage to audit, examine and make copies of such records, and to make audits of all invoices to Anchorage, materials, and other data relating to all matters covered by this contract. Anchorage may, at its option, permit the Contractor to submit its records to Anchorage in lieu of the retention requirements of this section. The above audit rights do not entitle Anchorage or its representatives to have access to: (i) information of other customers of Contractor; (ii) information concerning Contractor's internal charges; (iii) except for information required to be disclosed pursuant to Section 1.14, "Subcontracts", information relating to Contractor's procurement practices, except as to civil rights compliance; (iv) privileged information; (v) personal information about Contractor's personnel; or (vi) any internal audit of Contractor (collectively the "Audit Exclusions"), except as to civil right compliance. Any such audit shall occur at Contractor's place of business, or alternatively, records shall be provided digitally. Each party agrees to pay for its own routine costs of such audit. In the event of an audit involving non-routine costs, Anchorage shall be responsible for covering such non-routine costs. "Routine" costs shall be understood to mean all costs associated with audit requests that can be compiled, redacted, and provided by Contractor in a single (1) business day.

2.13: AVAILABILITY OF FUNDS

Payments under this contract require funds from future appropriations and are subject to future appropriations. If sufficient funds are not appropriated for payments required under this contract, this contract shall terminate without



penalty to Anchorage and Anchorage shall not be obligated to make payments under this contract beyond those which have previously been appropriated.

2.14: SIGNATURE

IN WITNESS WHEREOF, the parties have executed this contract on the date and at the place shown below.

MUNICIPALITY OF ANCHORAGE

[Insert Company Here]

Mayor, Municipal Manager or Approved Designee

(Contractor Signature)

Date: _____

Name: _____

Title: _____

Date: _____

IRS Tax Identification No.: _____

Tax Status: Taxable [] Non-Taxable []