



STATE OF POHNPEI
PERSONNEL SERVICES CONTRACT
(Professional Services by an Independent Contractor)

Contract No.

FOR GOOD AND VALUABLE CONSIDERATION, the State of Pohnpei (“State” hereinafter) and the Contractor as identified on the Fact Sheet agree to fully and faithfully perform the terms and conditions set out below and on the Fact Sheet.

TERMS AND CONDITIONS

1. Reference to the Fact Sheet and other documents.

The information set forth in these terms and conditions shall be read and interpreted in conjunction with the information set out in the Fact Sheet and any other documents that may be attached hereto and incorporated herein.

2. Performance of services; quality of materials.

a. Contractor shall exercise all reasonable skill, care and diligence in the performance of the services or completion of the project described in the Fact Sheet (“Services” hereinafter), and shall carry out all its responsibilities in accordance with recognized professional standards. The contractor shall in all professional matters act as a faithful adviser to the State and, in so far as any of its duties are discretionary, act fairly as between the State and third parties. Contractor’s Services shall be performed within the commencement and completion dates as set forth in the Fact Sheet.

b. The contractor shall provide all the expert technical advice and skills which are normally required for the class of services for which it is engaged. When special technical advice or assistance is required beyond that committed by this contract, the Contractor may with the prior written agreement of the State arrange for the provision of such services. The Contractor shall, however, retain full and unseverable responsibility for all the services which it is committed to render under this contract.

c. If Contractor is obligated to provide materials that are necessary for the proper completion of the Project, such materials shall be purchased in a timely manner and at Contractor’s expense.

3. Contract Price.

a. For and in consideration of Contractor’s timely performance of, and compliance with the terms and conditions of this contract, the State agrees to pay Contractor the contract price in accordance with the payment terms indicated on the Fact Sheet. The remunerations set out herein shall constitute Contractor’s only remuneration in connection with this Contract. Contractor shall not accept any trade commission, discount, allowance or indirect payment or other consideration relating to this Contractor or for the discharge of Contractor’s obligations.

b. If any services are required supplementary to those specified in this Contract due to circumstances arising beyond the control of the Contractor and which could not reasonably have been foreseen or for additional services, alterations or modifications as agreed between the parties and resulting from the State’s specific requests, the Contractor

shall receive additional remuneration computed on the basis described in the Fact Sheet.

c. Any and all additional expenses not included in the contract price must be approved by the State Officer, the Pohnpei Office of Budget, Planning and Statistics for budget certification and the Pohnpei Department of Treasury & Administration for funds certification.

d. If any amounts claimed by the contractor are disputed by the State, the payment of any amounts which is not contested shall not be withheld on those grounds.

e. At reasonable times and upon reasonable notice, the State shall be given access to the documents and records of the Contractor for confirmation or determination of payments due, costs incurred and services rendered.

f. Payments shall be made in U.S. dollars and all cost of conversion to another currency shall be borne by the contractor.

4. Investigations. The Contractor acknowledges that it has investigated and satisfied itself as to any problems or difficulties that may be encountered in performing the Services insofar as the information is reasonably ascertainable. Contractor’s failure to acquaint itself with the available information or to properly estimate the difficulty or cost will not relieve it of the responsibility of successfully performing and completing the Services in accordance with the terms of this Contract.

5. Excess payments. If the State has advanced of paid an amount in excess of its obligations hereunder, the Contractor shall promptly repay the excess to the State. Alternatively, the State may at its option withhold the excess from any compensation or benefit due the Contractor under this Contract.

6. Data and information. The State shall furnish to the Contractor without charge and within a reasonable time all pertinent data and information reasonably available and needed for carrying out the duties under this Contract. State shall make all decision needed to complete this Contract in such reasonable time as not to delay or disrupt the performance by the Contractor.

7. State support. The States makes no commitment to support the Contractor in any way other than as stated in these General Provisions and the Fact Sheet.

a. The State shall make available to the Contractor for the purpose of performing the Services, the items described in the Fact Sheet. If there is a delay in receiving such items, Contractor shall notify the State of such delay and an appropriate extension of time shall be granted for completion of the Services.

- b. Any equipment and facilities to be provided by the State shall be inventoried by the parties and shall then be consigned to the Contractor. Thereafter, the Contractor shall assume full responsibility for their security and maintenance.
 - c. The State shall provide unobstructed access to all offices and files within its custody or control that is related to the performance of the Services.
8. **Payments to creditors.** Unless agreed otherwise, the State shall not be the medium for payments due from the Contractor to Contractor's employees, agents, suppliers or other creditors.
9. **Subcontract or assignment.** Contractor may not subcontract or assign any part of the Services required by this Contract without the prior written consent of the State. Unless specifically agreed, those subcontractors or assignees approved by the State shall not relieve the Contractor of the ultimate responsibility to complete the services and to fully perform all terms of this Contract. Approval of a subcontractor or assignee will not be given until the Contractor submits to the State Officer a written Statement concerning the proposed award to the subcontractor or assignee, which statement shall contain such information as the State Office may require.
10. **Partnerships.** If the Contractor is a partnership and the Contractor takes an additional partner or partners, he, she or they shall hence be deemed to be included in the term "Contractor" . The State may, at its sole option, terminate this Contract upon the death or withdrawal of a partner.
11. **Changes.** The State reserves the right to order changes to the Services without invalidating this Contract. Such changes shall be initiated by the State Officer within seven (7) days or as specified. The State agrees to make adjustments to the contract price and time of completion as is reasonable and appropriate. All changes shall be in writing and signed by the parties.
12. **Inspection and review.**
- a. The State is authorized to inspect and review the Services being provided. The State Officer shall decide all questions as to the quality and acceptability of the Services, the manner of the performance, and the rate of progress. The State Officer's decision on such matters shall be final except for appeals as provided in these General Provisions.
 - b. The Contractor shall, without charge, correct any work found by the State Officer not to conform to the Contract requirements.
 - c. If the Contractor does not promptly correct inadequate or incorrect performance of the Services, the State may either correct performance and charge all cost thereof to the Contractor, or may terminate this Contract.
 - d. Acceptance of the work by the State shall be made promptly as practicable after completion and review as required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or as regards the State's rights under any warranty or guarantee.
13. **Liquidated damages for untimely completion.** The parties agree that completion of the Services by the completion date is an essential part of this Contract and that failure to do so will damage the State. Such damages are liquidated and will be incurred for each day that the Services are not completed and accepted within the stated time. The amount of said liquidated damage is indicated in the Fact Sheet.
14. **Suspension or delay of work.** The Officer may order the Contractor to suspend or delay all or a part of the Services for as much time as the State Officer deems appropriate for the convenience of the State. If the performance of all or any part of the Services is suspended or delayed by the State Officer for an unreasonable length of time, an adjustment shall be made for any increase in the cost of performance of this Contract caused by such unreasonable suspension or delay, excluding profit or lost profit from other contracts. The changes to this contract shall be put into writing and signed by the parties. No adjustment shall be made under this Section for a suspension, delay, or interruption: a. When performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; b. when an equitable adjustment is provided for, or excluded under any other provision of this Contract; or c. when it is caused by circumstances beyond the control of the State.
15. **Termination:**
- a. **By the State.** This contract by may be terminated by the State for cause including, but not limited to, Contractor's breach of this Contract, the failure to commence the Services on the date indicated, or if having commenced work, the Contractor abandons the work, fails to make reasonable progress or fails to perform or complete the Services to the satisfaction of the State. This Contract may also be terminated by the State at any time when the State Officer determines that such termination is in the best interest of the State. A notice of termination shall be delivered to the Contractor stating when such termination is effective. Until the termination date, the parties shall continue to fulfill and comply with the terms of this Contract.
 - b. **By the Contractor due to inability to perform.** The Contractor shall promptly notify the State, in writing, of any situation beyond the Contractor's control and not reasonably foreseeable, which makes it impossible for the Contractor to carry out in whole or in part the obligations under this Contract. In that situation the Services shall be deemed to be postponed for a period of time equal to that caused by the *force majeure* and for a reasonable time thereafter to remobilize for the continuation of the Services.
 - c. **By the Contractor for nonpayment.** The Contractor may, by written notice, terminate the Contract if payment for that part of any invoice which is not contested has not been received within sixty (60) days of submission; of if the Services have been postponed as provided in Subsection b. and the period of postponement has exceeded six (6) months.
 - d. **Final payment upon termination.** Within twenty (20) days of termination or postponement as provided in this Section, the State shall process a payment for the Services performed or completed through the termination date and any reimbursable costs. Any amounts due the Contractor may, however, be used to offset any damages or costs incurred by the State due to Contractor's breach or inadequate performance. Such costs may include those incurred as a result of having to contract a replacement to perform the Services that the Contractor failed to perform. All other provisions relating to the Contractor's Services covered by this Contract remain effective during the termination proceedings.

- e. **Accrued rights.** Termination of this Contract, for whatever reason, shall not prejudice or affect the accrued right or claims and liabilities of either party.
- f. **No further obligation of the State.** Except as provided herein, the State has no further obligation upon completion or earlier termination of this Contract.
- 16. Final Review.** A review shall be performed by the State Officer prior to the State's acceptance of the Services. Such review may occur on a piecemeal basis (example, as each unit is completed or upon the passage of a certain period of time) or after the Services have been completed and fully performed.
- 17. State's acceptance of the Services.** The State's acceptance of the Services shall be issued upon completion of the Services to the satisfaction of the State Officer.
- 18. Indemnification.** The Contractor agrees to indemnify and hold the State harmless against all causes of action, claims, liabilities, losses, costs, expenses, damages or bodily injuries or deaths (including attorney's fees and other expenses of litigation) resulting from the acts or omissions of the Contractor and Contractor's agents, employees or subcontractors and includes any act or omission, foreseeable or not.
- 19. Resolving disputes.** Any dispute concerning a question of fact arising under this Contract that is not resolved by agreements, and all appeals from decisions of the State Officer shall be decided by the head of the Allotee Agency. The decision shall be in writing and shall be final.
- 20. Contractor's warranty.** The Contractor warrants that the results and products of the Services will not infringe any existing copyright or similar proprietary rights in intellectual property. Contractor shall indemnify the State against any claim, demand or recovery finally sustained in any proceedings brought against the State by reason of any violation of proprietary right or copyright.
- 21. Ownership.** All right, title and interest in the results and work product of the Services shall belong to the State.
- 22. Independent contractor status.** Contractor is an independent contractor and not an agent or employee of the State. It is understood that the Contractor is exempt from the Pohnpei Public Service System Act.. Contractor is responsible for withholding and paying all Social Security, gross revenue, excise, sales, import and use taxes, and any other fee or tax that may be required by law.
- 23. Compliance with laws.** Contractor shall comply with all applicable laws of the State and the Federated States of Micronesia. Contractor shall also respect and honor the customs and traditions of this State and Nation.
- 24. Notices.** All notices under this Contract must be given in writing and shall be deemed to have been given if delivered or sent by one of the following means: personal delivery to the designated representative of each of the parties; by Telex; by telegram; by registered post; or by FAX.
- 25. Ruling language; interpretation and venue.** The English language version of this Contract shall prevail even if the Contract is translated and the translated version is also signed by the parties. This Contract shall be fairly construed according to the laws of the Federated States of Micronesia and the State of Pohnpei. The venue of all court actions shall be in a court of competent jurisdiction in the State of Pohnpei.
- 26. Parties bound.** This Contract binds the parties and their employees, agents, successors, assigns and legal representatives, if any.
- 27. Entire agreement; amendments.** This Contract, including the Fact Sheet, these General Provisions and all other documents and exhibits attached hereto or incorporated herein, contain the entire agreement of the parties and no prior or subsequent verbal representations or understandings shall have the effect of amending or changing the terms as set forth therein. All amendments must be in writing and signed by the parties.
- 28. Effective date.** This Contract shall be valid and enforceable only after all of the parties and agencies have signed it, regardless of who signs first or last.