

PROFESSIONAL SERVICES AGREEMENT

PREAMBLE

This Contract, made and entered into this _____ day of _____, 2022, by and between _____ hereinafter called "Contractor", and the CITY OF SANDY, a municipal corporation of the State of Oregon, hereinafter called "City".

WHEREAS, City has need for the services of a party with the particular training, ability, knowledge and experience possessed by Contractor.

WITNESSETH:

The parties hereto mutually covenant and agree to and with each other as follows:

1. SCOPE OF WORK

The scope of work, is contained in Exhibit A attached hereto and by this reference made a part hereof.

This contract shall supersede any prior representation or contract, written or oral. This contract shall not be subject to modification or amendment except in writing, executed by both parties.

2. DURATION OF CONTRACT

Unless earlier terminated or extended, this contract shall remain in force and effect from the date in the preamble above through _____.

3. PAYMENT

City agrees to pay, and Contractor agrees to accept, in full payment for the performance of this contract, according to the fee schedule in Exhibit B attached hereto and by this reference made a part hereof. The fee schedule in Exhibit B may be adjusted annually upon mutual agreement of the parties to reflect inflation and changes in labor and materials costs.

4. CHANGES

This contract and any substantive changes to the scope of work or changes to the contract costs will not be effective until approved in writing by the City.

5. INDEPENDENT CONTRACTOR STATUS

Contractor agrees and certifies that:

- A. Contractor is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to payment under this contract;
- B. Contractor will not, on account of any payments made under this contract, be eligible for any benefit from federal social security, workers' compensation, unemployment insurance, or the Public Employee's Retirement System, except as a self-employed individual;
- C. Contractor is not currently an employee of the federal government or the state of Oregon;
- D. Contractor is not a contributing member of the Public Employees' Retirement System;
- E. Contractor certifies it meets the specific Independent Contractor Standards of ORS 670.600;
- F. Contractor is not an "officer, employee or agent" of City as those terms are used in ORS 30.265.

6. SUBCONTRACTS AND ASSIGNMENT; SUCCESSORS IN INTEREST

Contractor shall not enter into any subcontracts for any of the work required by this contract, excepting those portions of the work specifically described in Exhibit A or assign or transfer any of its interest in this contract without the prior written consent of City. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.

7. PAYMENT OF LABORERS

- A. Contractor shall:

(1) Make payment promptly, as due, to all persons supplying to Contractor labor or material for the prosecution of the work provided for in this contract;

(2) Pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of this contract;

(3) Not permit any lien or claim to be filed or prosecuted against City on account of any labor or material furnished; and

(4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

B. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any person in connection with this contract as such claim becomes due, City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of such contract.

C. The payment of a claim in this manner shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.

8. PAYMENT FOR MEDICAL CARE AND PROVIDING WORKERS' COMPENSATION

Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

Contractor, its subcontractors, if any, and all employers working under this contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

9. OVERTIME AND HOLIDAYS

Persons employed by Contractor under this Personal Services Contract shall receive at least time and a half pay for work performed on the following legal holidays:

- A. New Year's Day on January 1
- B. Memorial Day on the last Monday in May
- C. Independence Day on July 4
- D. Labor Day on the first Monday in September
- E. Thanksgiving Day on the fourth Thursday in November
- F. Christmas Day on December 25

and for all overtime worked in excess of forty [40] hours in any one week, except for individuals who are excluded under ORS 653.101 to 653.261 or under 29 U.S.C., Sections 201 to 209, from receiving overtime.

10. TIME LIMITATION ON CLAIM FOR OVERTIME

Any worker employed by Contractor shall be foreclosed from the right to collect for any overtime under this contract unless a claim for payment is filed with Contractor within ninety [90] days from the completion of the contract, providing Contractor has:

- A. Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the work; and
- B. Maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

11. ERRORS

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.

12. DEFAULT

City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of the contract:

- A. If Contractor fails to provide services called for by this contract within the time or in the manner specified herein, or any extension thereof; or

B. If Contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten [10] days or such longer period as City may authorize.

Upon termination, City will pay Contractor for only the value to City of work actually performed. The rights and remedies of City provided in the above clause related to defaults (including breach of contracts) by Contractor shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

13. OWNERSHIP OF WORK

All work products of Contractor, including background data, documentation and staff work that is preliminary to final reports, which result from this contract are the exclusive property of City. If this contract is terminated by either party or by default, City, in addition to any other rights provided by this contract, may require Contractor to transfer and deliver such partially completed reports or other documentation that Contractor has specifically developed or specifically acquired for the performance of this contract.

14. INDEMNITY AND HOLD HARMLESS

Contractor shall indemnify and hold City, its officers and employees, harmless against all liability, loss or expenses, including attorney's fees, and against all actions or judgments based upon or arising out of damage or injury (including death) to persons or property caused by Contractor's negligent act or omission of an act sustained in connection with the performance of this contract or by conditions created thereby, or based upon violation of any statute, ordinance or regulation.

15. INSURANCE

Contractor shall obtain, prior to the commencement of the contract, and shall maintain in full force and effect for the term of this contract, at Contractor's expense, an automobile liability insurance policy for the protection of Contractor and City, its officers, boards, commissions and employees. This policy shall be issued by a company authorized to do business in the state of Oregon, protecting Contractor or subcontractors or anyone directly or indirectly employed by either of them against liability for the loss or damage of personal and bodily injury, contractual liability, death and property damage, and any other losses or damages above mentioned in the combined single limit of \$1,000,000 or the limit of public

liability contained in ORS 30.260 to 30.300, whichever is greater. The insurance company shall provide City with an endorsement thereto naming City as an additional insured, providing that no acts on the part of the insured shall affect the coverage afforded to the above policy, and providing City will receive thirty [30] days' written notice of cancellation or material modification of the insurance contract.

Contractor will not perform any work under this contract until City has received copies of applicable insurance policies or acceptable evidence that appropriate insurance heretofore mentioned is in force.

16. STANDARD OF WORK

Contractor will accomplish the work using a standard of performance and care that is currently accepted by other professionals engaged in similar work in the Portland metropolitan area.

17. TERMINATION

This contract may be terminated by mutual consent of the parties, or by City at any time by giving written notice to Contractor no later than fifteen [15] days before the termination date. Contractor shall be entitled to compensation for services performed up to the date of termination.

18. CONFIDENTIALITY

No reports, information and/or data given to or prepared or assembled by Contractor under this contract shall be made available to any individual or organization by Contractor without the prior written approval of City. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Contractor from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Contractor to defend itself from any suit or claim.

19. PUBLICATION RIGHTS / RIGHTS IN DATA

All publication rights in the product produced by Contractor in connection with the work provided for under this contract, whether in preliminary draft or final form, shall be vested in City.

Contractor shall not publish any of the results of the work without the prior written permission of City.

All original written material and other documentation, including background data, documentation and staff work that is preliminary to final reports, originated and prepared for City pursuant to this contract, shall become exclusively the property of City. The ideas, concepts, know-how or techniques relating to data processing development during the course of this contract by Contractor or City personnel, or jointly by Contractor and City personnel, can be used by either party in any way it may deem appropriate.

Material already in Contractor's possession, independently developed by Contractor outside the scope of this contract or rightfully obtained by Contractor from third parties, shall belong to Contractor. However, Contractor grants to City a non-exclusive, irrevocable and royalty-free license to use such material as it sees fit.

This contract shall not preclude Contractor from developing materials which are competitive, irrespective of their similarity to materials which might be delivered to City pursuant to this contract in developing materials for others, except as provided in this section.

20. ACCESS TO RECORDS

Contractor agrees that City and its authorized representatives shall have access to the books, documents, papers and records of Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcripts.

21. ATTORNEY'S FEES

If a suit or action is filed to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees.

22. COMPLIANCE WITH APPLICABLE LAW

Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with:

- A. Title VI of the Civil Rights Act of 1964;
- B. Section V of the Rehabilitation Act of 1973;
- C. The Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and
- D. All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

23. FOREIGN CONTRACTOR

If Contractor is not domiciled in or registered to do business in the state of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this contract. Contractor shall demonstrate its legal capacity to perform these services in the state of Oregon prior to entering into this contract.

24. GOVERNING LAW; JURISDICTION; VENUE

This contract shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between City (and/or any other agency or department of the state of Oregon) and Contractor that arises from or relates to this contract shall be brought and conducted solely and exclusive within the Circuit Court of Clackamas County for the state of 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. Contractor, by the signature below of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts.

25. FORCE MAJEURE

Neither City nor Contractor shall be held responsible for delay or default caused by fire, riot, epidemics, pandemics, declared states of emergency, acts of God, or war where such cause was beyond, respectively, the reasonable control of City or Contractor. Contractor 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 this contract.

26. MERGER CLAUSE

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

27. EXECUTION AND COUNTERPARTS

This contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

CONTRACTOR

By: _____

City/State/Zip

Printed Name

Individual S.S.N. or
Employer ID #: _____

Title: _____

- Check one:
- Sole Proprietor
 - Partnership
 - Corporation
 - Governmental
 - Non-Profit

_____, 2022
Date

Firm Name

Address

CITY OF SANDY

By: _____
Jennifer Coker, Director of Public Works/City Engineer
City of Sandy
39250 Pioneer Blvd.
Sandy, OR 97055

_____, 2022
Date