

## PROFESSIONAL SERVICES AGREEMENT

### PREAMBLE

This Contract, made and entered into upon the later day stated on the signature page (the "Effective Date") by and between \_\_\_\_\_, hereinafter called "Contractor", and the CITY OF SANDY, a municipal corporation of the State of Oregon, hereinafter called "City".

WHEREAS, City is in the process of executing a large-scale program titled the Sandy Clean Water Program ("SCWP") to upgrade its wastewater collection and treatment facilities, and protect the environment while planning for a growing community; and

WHEREAS, the City anticipates needing various minor upgrades to its water treatment facility in order to provide a more reliable and resilient resource; and

WHEREAS, the City solicited proposals from engineering firms via the RFP attached hereto as Exhibit A, in order to provide on-call, routine engineering services and related consulting services for upgrades in connection with the SCWP and City water treatment facility (the "Purpose"); and

WHEREAS, upon evaluating all responses, the City awarded one such proposal to the Contractor.

### WITNESSETH:

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

#### 1. ENUMERATION OF CONTRACT DOCUMENTS

The "Contract Documents" include the following and together complete the entirety of the Contract. In the event of a conflict between the terms of these Contract Documents, the terms shall take precedence in the order enumerated below:

- A. This Contract;
- B. Exhibit A Request for Proposal; and
- C. Exhibit B Form of Task Order

#### 2. TASK ORDERS

City may identify the need for the provision of services under this Contract in connection with the Purpose, from time to time and for the duration of the Term. When City identifies a need for the provision of services under this Contract in connection with the Purpose, City may issue a Task Order for such services to Contractor. Contractor shall review the Task Order and promptly respond with any suggested edits, or execute the Task Order, in order to provide such services. The provision of services under this Contract shall be accomplished only through the negotiation and full execution of a Task Order substantially in the form set forth in Exhibit B. Such fully executed Task Order shall include, at minimum, the services and deliverables to be completed by Contractor, the schedule for such services, and the fee for such services

and any associated fee schedule.

In total, all fees contemplated under any and all Task Orders fully executed pursuant to this Contract shall not cumulatively exceed five hundred thousand dollars (\$500,000).

The parties recognize and agree that the City may have entered into multiple agreements with other qualified consultants in connection with the Purpose. The City intends to rotate services that it identifies in connection with the Purpose amongst the selected and contracted consultants; however, selection of a particular consultant for a particular service will be based on the City's sole discretion and judgment. In selecting a consultant to fully execute a Task Order for a particular service, City shall consider the consultants' expertise, availability, and pricing information. By executing this Contract, Contractor understands and agrees that there is no guarantee of any particular dollar value associated with services, that City retains the sole right to make a selection for any individual service, and that execution of this Contract is not a guarantee of any availability of service or Task Order execution.

All provisions and covenants contained in said exhibit are hereby incorporated by reference and shall become a part of this Contract as fully set forth. Contractor will, in the rendering of its services to City, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this Contract (including Exhibit "B").

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.

**3. DURATION OF CONTRACT**

Unless earlier terminated or extended, this Contract shall remain in force and effect from **the Effective Date** through December 31, 2024 (the "Term"). The City may choose to extend the Term, in its sole discretion, for up to an additional two (2) calendar years from the expiration date, by providing Contractor with advance written notice of its intent to renew.

**4. CONTRACTOR IDENTIFICATION**

Contractor shall furnish to City Contractor's employer identification number as designated by the Internal Revenue Service or, if the Internal Revenue Service has designated no employer identification number, Contractor's Social Security number.

**5. 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. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the Contract price or Contract time due to such unauthorized extra work, and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such unauthorized extra work.

**6. 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.

**7. SUBCONTRACTS AND ASSIGNMENT; SUCCESSORS IN INTEREST**

Both City and Contractor bind themselves and any partner, successor, executor, administrator, or assign to this Contract. 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 B 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.

**8. PROJECT INFORMATION**

Contractor agrees to share all project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the project. No information, news, or press releases related to the project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior written authorization of City.

**9. DUTY TO INFORM**

Contractor shall give prompt written notice to City if, at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Contractor shall constitute neither agreement with nor acquiescence in Contractor's statement or claim and shall not constitute a waiver of any of City's rights.

**10. PAYMENT OF LABORERS**

- A. Contractor shall, pursuant to ORS 279B.220:
  - (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) As applicable, 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.

**11. PAYMENT FOR MEDICAL CARE AND PROVIDING WORKERS' COMPENSATION**

Pursuant to ORS 279B.230, 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. Contractor warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Contractor shall indemnify City for any liability incurred by City as a result of Contractor's breach of the warranty under this paragraph.

**12. OVERTIME AND HOLIDAYS**

Persons employed by Contractor under this 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.

**13. ERRORS**

Contractor shall perform such additional work as may be necessary to correct errors or failures to meet the standard of work required under this Contract without undue delays and without additional cost to City.

**14. 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.

Pending a decision to terminate all or part of this Contract, City unilaterally may order Contractor to suspend all or part of the services under this Contract. If City terminates all or part of the Contract pursuant to this paragraph, Contractor shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Contract and later orders Contractor to resume those services, Contractor shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

Upon termination, City will pay Contractor for only the value to City of work actually performed, may obtain substitute services in a reasonable manner, and may recover from Contractor the amount by which the price for those substitute services exceeds the price for the same services under this Contract. To recover amounts due under this paragraph, City may withhold from any amounts owed by City to Contractor, including but not limited to, amounts owed under this or any other Contract between Contractor and City. 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.

**15. TERMINATION FOR CONVENIENCE**

City may terminate all or part of this Contract at any time for its own convenience by written notice to Contractor. Upon termination under this paragraph, Contractor shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of City's written notice of termination, whichever is earlier, plus Contractor's reasonable costs actually incurred in closing out the Contract.

**16. OWNERSHIP OF WORK**

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Contract, and all work products of Contractor, including background data, documentation and staff work that is preliminary to final reports, which result from this Contract, shall become the exclusive property of City upon payment of the compensation due to Contractor under this Contract, including as set forth in Section 15. Contractor shall execute any assignment or other documents necessary to affect this paragraph. Contractor may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Contractor shall transfer to City any data or other tangible property generated by Contractor under this Agreement and necessary for the beneficial use of intellectual property covered by this paragraph. 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.

**17. INDEMNITY AND HOLD HARMLESS**

Contractor shall indemnify, defend and hold City, its officers, agents, volunteers, elected officials, and employees, harmless against all liability, loss or expenses, including reasonable attorney's fees, and against all actions or judgments based upon or arising out of damage or injury (including death) to persons or property to the extent caused by Contractor's act, errors or omissions of an act sustained in connection with the performance of this Contract or based upon violation of any statute, ordinance or regulation.

**18. INSURANCE**

- A. 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, occurrence form commercial general liability and automobile liability insurance 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 anyone directly or indirectly employed by either of them against liability for the loss or damage of personal and bodily injury, 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.

- B. Errors and Omissions: Contractor shall maintain during the term of this Contract, Professional Liability Insurance covering damages caused by any errors, omissions or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000. Annual aggregate limit shall not be less than \$2,000,000. If such insurance is written on a claims-made basis, the Contractor agrees that such policy shall have an extended reporting or discovery “tail” period, or be renewed for a period of not less than (i) two years from substantial completion of the project or abandonment of for claims that are known or in the exercise of reasonable care should have been known, and (ii) ten years after substantial completion for latent defects. Such policy shall have a retroactive date effective before the commencement of any work by the Contractor.
- C. Workers’ Compensation Coverage: Contractor certifies that Contractor has qualified for State of Oregon Workers' Compensation coverage for all Contractor’s employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407, or as a self-insured employer. Contractor shall provide to City, within ten (10) days after execution of this Contract by the parties, a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Contractor is self-insured.
- D. 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.
- E. The coverage provided by insurance required under this Contract shall be primary, and any other insurance carried by City shall be excess.

**19. 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.

**20. TERMINATION**

This Contract may be terminated by mutual consent of the parties, or by City at any time in accordance with section 14. Contractor shall be entitled to compensation for services performed up to the date of termination.

**21. 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.

**22. PUBLICATION RIGHTS / RIGHTS IN DATA**

- A. 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.
- B. Contractor shall not publish any of the results of the work without the prior written permission of City.
- C. 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.
- D. 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.
- E. 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.

**23. ACCESS TO RECORDS**

Contractor shall retain all books, documents, papers, and records that are directly pertinent to this Contract for at least three (3) years after City makes final payment on this Contract and all other pending matters are closed. 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 for three (3) years following expiration or termination of this Contract.

**24. ATTORNEY'S FEES**

If a suit or action is filed to enforce any of the terms of this Contract, the substantially 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.

**25. 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 applicable provisions of ORS 279A, 279B, 279C, 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.

**26. 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.

**27. 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. Any litigation arising under or as a result of this Contract shall be tried in court without a jury.

**28. MERGER CLAUSE**

This Contract and attached Exhibit 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.

**29. 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:	
Printed Name:	
Title:	
Date:	
Firm Name:	
Address:	
City, State, Zip	
Individual S.S.N or Employer ID#	

**CITY OF SANDY**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

City of Sandy  
39250 Pioneer Blvd.  
Sandy, OR 97055