

performed on a task order basis. Some work will involve the use of funds provided by other funding agencies. A task order using these funds will not be valid without the prior approval of the funding agency. In carrying out these functions Independent Contractor shall

- 2.1. Account for all billed time with the name of the individual performing the work, the hours worked, the rate charged the City, and a description of the work performed.
 - 2.2. Assign one person to attend meetings. Participation in meetings by other employees or subcontractors of Independent Contractor must be requested and approved in advance if the person's time is to be billed either directly or indirectly to the City.
 - 2.3. Inform the City prior to engaging in contract discussions with proposed sub-contractors.
 - 2.4. Submit sub-contracts for reviewed and approved by City prior to execution. City retains the right at its option to contract directly with subcontractors.
 - 2.5. Submit solicitations for bids or proposals to City prior to advertising and publishing for City review and authorization. Nothing shall go out in the City's name without express written authorization from the City.
3. **Term.** This Agreement is effective as of the date first set forth above and shall continue until June 30, 2024, unless earlier terminated in accordance with the provisions of this Agreement or by mutual consent of the parties. This contract may be renewed for additional one-year periods upon the agreement of both parties. The change of any part of the contract other than the termination date constitutes an amendment.
 4. **Independent Contractor Status.** By its execution of this Agreement, Independent Contractor certifies its status as an "Independent Contractor" as that term is used under the laws of the State of Oregon, and that all performance of any labor or services required to be performed by Independent Contractor under the terms of this Agreement shall be performed in accordance with the standards set forth in ORS 670.600.
 5. **Conformance with Oregon Public Contracts Law (ORS Chapter 279).** Independent Contractor shall comply with all applicable provisions of Oregon law for public contracts, including, but not limited to ORS 279B.220, ORS 279B.225, ORS 279B.230, and ORS 279B.235.
 6. **Work Performed.** The work to be performed by Independent Contractor includes services generally performed by Independent Contractor in his/her/its usual line of business.
 7. **Tax duties and Liabilities.** Independent Contractor shall be responsible for all federal, state and local taxes, if any, applicable to any payments received pursuant to this Agreement, including but not limited to income tax, payroll tax, and social security and self-employment tax. CITY shall not withhold, pay, or in any other manner be responsible for payment of any taxes on behalf of Independent Contractor.

- 8. Reimbursement of Expenses.** Independent Contractor shall not be entitled to reimbursement by CITY for any expenses incurred by Independent Contractor unless otherwise agreed in writing.
- 9. Materials and Supplies.** Independent Contractor shall supply all materials and supplies needed to perform the services required unless otherwise agreed in writing.
- 10. No Authority to Bind CITY.** Independent Contractor shall have no authority to enter into contracts on behalf of CITY, its officers, agents and employees. This Agreement shall not create a partnership or joint venture of any sort between the parties.
- 11. Federal Employment Status.** In the event payment made pursuant to this Agreement is to be charged against federal funds, Independent Contractor hereby certifies that it is not currently employed by the Federal Government and the amount charged does not exceed Independent Contractor's normal charge for the type of services provided.
- 12. Indemnification and Hold Harmless.** To the fullest extent of the law, Independent Contractor shall defend, indemnify and hold harmless CITY, its officials, employees, servants, and agents from and against all claims, demands, and judgments (including attorney fees), made or recovered against them including but not limited to damages to real or tangible personal property or for bodily injury or death to any person, arising out of, or in any manner connected with the performance of this Agreement by Independent Contractor, its officers, employees, and agents.
- 13. Insurance.**
- 13.1. General Insurance.** Independent Contractor shall maintain in force for the duration of this agreement a Commercial General Liability insurance policy written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The CITY of Coburg, its officials, employees, servants and agents will be named as an additional insured as respects to work or services performed under this agreement. This will apply to both work in progress and completed operations. This insurance shall be primary and shall be paid and applied first in its entirety prior to any application of insurance the CITY may carry on its own.
- 13.2. Professional Liability.** Independent Contractor shall maintain in force during the duration of this Agreement (and, if it is a claims made policy, for a year following completion of the project) a professional liability policy with limits of not less than 2,000,000.
- 13.3. Workers' Compensation.** Independent Contractor shall provide and maintain workers' compensation coverage for its employees, officers, agents, or partners, as required by applicable workers' compensation laws.
- 13.4. Evidence of Coverage.** Evidence of the above coverages issued by a company satisfactory to CITY shall be provided to CITY by way of a certificate of insurance before any work or services commence. A 30-day notice of cancellation or material change in

coverage clause shall be included. Failure to maintain the proper insurance shall be grounds for immediate termination of this contract.

- 13.5. **Equipment and Material.** Independent Contractor shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the work.
- 13.6. **Exception or Waivers.** Any exception or waiver of these requirements shall be subject to review and approval by CITY.

14. Termination.

- 14.1. **Without Cause.** The performance of work under this Agreement may be terminated by CITY, in whole or in part, whenever for any reason CITY shall determine that such termination is in the best interest of CITY. Any such termination shall be effected by delivery to the Independent Contractor of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination is effective. Upon delivery to the Independent Contractor of a Notice of Termination under this paragraph, the Independent Contractor and CITY shall, by agreement, make an appropriate written modification to this Agreement governing completion of portions of the independent Contractor's work and payment therefore by CITY.
- 14.2. **For Cause.** City may terminate this Agreement effective upon delivery of written notice to Independent Contractor, or at such later date as may be established by CITY, under any of the following conditions: 1) City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services (this Agreement may be modified to accommodate a reduction in funds); 2) Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement; 3) any license or certificate required by law or regulation to be held by Independent Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed; 4) Independent Contractor fails to perform any of the provisions of this Agreement within the time specified; or 5) Independent Contractor fails to perform any of the provisions of this Agreement, or fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from CITY, fails to correct such failures within 10 days or such other period as CITY may authorize. Independent Contractor shall be entitled to payment for services provided prior to the termination date.
- 14.3. **Damages for Breach.** Damages for breach of this Agreement under subsections 4) and 5) of Section 14.2 shall be those allowed by Oregon law and Section 20 of this Agreement.

- 15. **Rights in Data.** All original written material, including programs, card decks, tapes, listings, and other documentation originated and prepared for CITY pursuant to this Agreement, shall become exclusively the property of CITY. The ideas, concepts, know-how, or techniques developed during the course of this Agreement by Independent Contractor

personnel can be used by either party in any way it may deem appropriate. Material already in Independent Contractor's possession, independently developed by Independent Contractor outside the scope of this Agreement, or rightfully obtained by Independent Contractor from third parties, shall belong Independent Contractor. This agreement shall not preclude Independent Contractor from developing materials which are competitive, irrespective of their similarity to materials which might be delivered to CITY pursuant to this Agreement. Independent Contractor shall not, however, use any written materials developed under this Agreement in developing materials for others, except as provided in this section.

- 16. Confidentiality.** During the course of performance hereunder, Independent Contractor or its agent, employees, or contractors, may receive confidential information. Independent Contractor agrees to use its best efforts to maintain the confidentiality of such information and to inform each agent and employee performing services of the confidentiality obligation that pertains to such information.
- 17. Assignment/Subcontract.** Independent Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this agreement, in whole or in part, without the prior written approval of CITY. No such written approval shall relieve Independent Contractor of any obligations of this Agreement, and any transferee or subcontractor shall be considered the agent of Independent Contractor. Independent Contractor shall remain liable as between the original parties to this Agreement as if no such assignment had occurred.
- 18. Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.
- 19. Compliance with All Government Regulations.** By executing this Agreement, Independent Contractor certifies that, to the best of its knowledge, Independent Contractor is eligible to contract with the CITY as a public body, and is not in violation of any rule, law or regulation that would prohibit the CITY from entering into an Agreement with Independent Contractor. Independent Contractor shall comply with all Federal, State and local laws, codes, regulations and ordinances applicable to the work performed under this Agreement. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Agreement. Damages or costs resulting from noncompliance shall be the sole responsibility of Independent Contractor.
- 20. Attorney Fees.** In the event a lawsuit of any kind is instituted on behalf of CITY to enforce any provision of this Agreement, Independent Contractor shall pay such additional sums as the Court may adjudge reasonable for attorney fees plus all costs and disbursements at trial and on any appeal.
- 21. Force Majeure.** Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable

control. CITY may terminate this Agreement upon written notice after determining such delay or default will unreasonably prevent successful performance of the Agreement.

22. Assistance Regarding Patent and Copyright Infringement. In the event of any claim or suit against CITY on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any material furnished or work or services performed hereunder, Independent Contractor shall defend CITY against any such suit or claim and hold CITY harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit.

23. Severability. If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

24. Access to Records. CITY and its duly authorized representatives shall have access to books, documents, papers and records of Independent Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

25. Waiver. Failure of CITY to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by CITY of the right to such performance in the future nor of the right to enforce any other provision of this Agreement.

26. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of CITY. No modification of this Agreement shall bind either party unless reduced to writing and subscribed by both parties, or ordered by a Court.

27. Nondiscrimination. Independent Contractor shall comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations.

28. Conflicts Prohibited. Independent Contractor shall not perform the any of the work tasks described in Attachment 1 for the City if the products or items to be reviewed were created or produced by Independent Contractor for any third party. In the event any third party submits for Engineering review plans, proposals or other documents produced by Independent Contractor for that third party or for any entity other than the City, Independent Contractor shall assist the City (at no cost to the City) in identification of, and retention of, a suitable, non-conflicted substitute to work on the matter for the City.

29. Remedies. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, and any litigation arising out of this Agreement shall be conducted in the courts of the State of Oregon, County of Lane.

30. Entire Agreement. This Agreement signed by both parties is the parties' final and entire Agreement and supersedes all prior and contemporaneous oral or written communications

between the parties, their agents and representatives. There are no representations, promises, terms, conditions or obligations other than those contained herein.

IN WITNESS WHEREOF the parties have executed this Agreement to be effective the date first set forth above.

CITY OF COBURG:

INDEPENDENT CONTRACTOR

By: _____
Name: Adam Hanks
Title: City Administrator
Date: _____

By: _____
Name: Damien Gilbert, P.E.
Title: Principal
Date: _____

ATTACHMENT 1 SCOPE OF WORK

Independent Contractor is hereby appointed City Engineer for the City of Coburg. The following work describes the ongoing services that Independent Contractor shall provide to the City of Coburg. These services are contracted on an on-call basis. It is expected that the City Engineer will be available on a daily basis for consultation.

City Engineer will complete tasks as directed by the City of Coburg personnel assigned to provide such direction. Upon receipt of a task or tasks provided by the City of Coburg, City Engineer shall provide an estimate of the time required to complete each task. City Engineer shall keep track of all time their firm spends on each task by task and shall provide a report at the end of each month listing each task on which their firm worked and the number of hours spent on each task.

- A. Assigned tasks may include but are not limited to, the following:
- General tasks associated with water, roads, parks and other typical municipal systems
 - Capacity and system planning
 - System improvements
 - Studies
 - Project Identification
 - Cost estimating
 - Project status, startup and shutdown work
 - Preventive, repair and corrective maintenance analysis and recommendations
 - Scheduling
- B. The City Engineer shall provide Professional Engineering services by an Engineer licensed in the State of Oregon, as well as provide the following support services as requested:
- Architectural
 - Structural
 - Geotechnical
 - Civil
 - Transportation
 - Planning
 - Life Safety
 - Surveying
 - Construction Coordination
 - Project Management
- C. In addition to any scope of work listed above, the following are things the City Engineer may be asked to do:
- Provide suggestions and make recommendations to City Staff
 - Lead initiatives for the City
- D. On behalf of the City, make direct contact or have interaction with other outside governing councils.

- Prepare proposals based upon City of Coburg defined scope, deliverables and criteria
- Assist City of Coburg with vendor selection
- Prepare system performance and project specifications
- Attend Council & Planning Meetings when requested
- Respond to requests for clarification regarding documents

ATTACHMENT 2
FEDERALSAFE DRINKING WATER PROJECT MANAGEMENT

Branch Engineering will serve as the project manager for the City of Coburg Safe Drinking Water Project. This federally funded project has specific requirements for all entities entering into contracts with loan recipients. City and Independent Contractor (also referred to herein as “Contractor”) hereby agree to the following additional contract provisions related to its work on the Safe Drinking Water Project.

Registration Requirements

1. Contractor must have an active SAM Registration
2. Contractor must provide DUNS number as part of this contract. (See Page 1)

Source of Funds

Work under this contract is funded by the federal Safe Drinking Water Revolving Loan Fund through Business Oregon and a partnership of Local and/or Private Funds.

Non Discrimination

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFP part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Termination for Cause and for Convenience & Breach of Contract

Contractor shall address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement. In addition, contractor shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See Section 14 of Agreement.

Intellectual Property

Contractor hereby grants to the U.S. E.P.A. a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes, any intellectual property developed under this contract. Contractor shall secure from third parties the same license in the name of the U.S. E.P.A regarding any intellectual property developed by third parties as subcontractors to perform this project, or developed under contract with the contractor specifically to enable contractor’s obligations related to this project.

Inspections, Information

Contractor shall permit, and cause its subcontractors to allow City of Coburg, the State of Oregon, the federal government and any party designated by them to:

1. Inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, and any other

matters relating to the Project, and to its financial standing, and shall supply such reports and information as reasonably requested.

2. Interview any officer or employee of the Contractor, or its subcontractors, regarding the project
3. Contractor shall retain all records related to the Project for three years after final payments are made and any pending matters are closed.

Prohibition on the Use of Federal Funds for Lobbying

Certification regarding Lobbying form is required for any contracts in excess of \$100,000.

Scope of Work Specific to Safe Drinking Water Project

Branch Engineering will serve as the project manager as it pertains to the engineering and construction of the project and will provide the following:

- a. Engineering services for the planning, design, construction and inspection of Coburg's Safe Drinking Water Project including
- b. Prepare proposal and bid documents and disburse them to the public based upon City of Coburg defined scope, deliverables and criteria. All bid proposals must be reviewed by Business Oregon two weeks prior to them going to the public. In addition, all bid packages and releases must be submitted to Coburg City Recorder for records retention.
- c. Review all bids and proposal submittals, requests for information (RFI) and assist City of Coburg with vendor selection and contract preparation as needed
All draft contracts must be forwarded, reviewed and approved by the City Attorney as well Business Oregon prior to execution
- d. Prepare system performance and project specifications
- e. Participate as a member of the City of Coburg Water Project Committee
- f. Attend City Council and Planning Meetings when requested
- g. Review and approve all construction pay requests and forward to the City for payment
- h. Provide necessary documentation to other City contractors as required
- i. Work in collaboration with Water Project team to provide information, documentation retention, tracking, and reporting.

31. Payment by CITY. CITY shall pay Independent Contractor according to the sum and schedule described on **Attachment 3** attached hereto and incorporated herein by this reference. Payments specific to the Federal Drinking Water Project shall not exceed \$1,500,000.

