CONTRACT FOR PROFESSIONAL SERVICES

BETWEEN

THE CITY OF LEBANON, OREGON

AND

NORTHWEST CODE PROFESSIONALS

This Contract is made and entered into this June 13, 2024, by and between the CITY of LEBANON, OR a municipal corporation of the State of Oregon, hereinafter called the "CITY" and Northwest Code Professionals, LLC an Oregon limited liability company, hereinafter call "CONTRACTOR".

WITNESSETH:

WHEREAS, CITY wishes to administer its own building inspection program as provided in ORS Chapter 455 and for that purpose is in need of the services of building officials and inspectors duly certified by the State of Oregon; and

WHEREAS, CONTRACTOR is in the business of providing the services of building officials duly certified by the State of Oregon to governmental agencies and other parties.

WHEREAS, CITY wishes to obtain from CONTRACTOR and CONTRACTOR wishes to provide to CITY certain services of building officials and inspectors duly certified by the State of Oregon on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. TERM. This Contract shall commence on the 1st day of July 2024 and shall continue in full force and effect for a five year term until June 30, 2029, unless terminated sooner under the provisions as provided in Section 12.

2. SERVICES. The services to be provided by CONTRACTOR to CITY under the terms of this Contract shall consist of the following:

   A. The examination of building plans submitted to CONTRACTOR by CITY to ensure their compliance with the Structural, Mechanical, Plumbing, and One and Two Family Dwelling Specialty codes of the Oregon State Building Code as adopted by CITY (State Building Code); and the Manufactured Home and Recreational Vehicle Regulations adopted by the State of Oregon (State MHRV Regs). CONTRACTOR shall review all permit applications submitted to it by CITY and complete a plans review report in a timely fashion, ordinarily within ten (10) working days after receipt

of all proper plans and applications. Promptly upon completion of its plans review report, CONTRACTOR shall approve or not approve such plans and notify CITY of such decision so CITY may issue appropriate permits or notify the applicant of any deficiencies identified in the plan review report.

B. Upon request and instruction by CITY and subject to review and final approval by CITY, provide complete building official services at all levels and oversee enforcement of the State Building Code, and the State MHRV Regs, by performing field inspections of building sites within the CITY.

C. Upon request and instruction by CITY and subject to review and final approval by CITY, conduct inspections during construction to ascertain if the construction complies with the applicable State Building Code, State MHRV Regs, and CITY Code & Ordinances as per the approved plans. CONTRACTOR agrees to make a good faith effort to coordinate its inspections with the CITY Fire Department (Fire Marshal) and CITY Public Works Department.

D. Make a good faith effort to provide inspections within one (l) working day following its receipt of an inspection request from CITY; however, CITY acknowledges and agrees CONTRACTOR shall have up to two (2) working days to provide inspections required under the terms of this Contract.

E. Meet with permit applicants/holders and/or CITY staff at CITY Hall to address and attempt to resolve any issues arising under the applicable State Building Codes, State MHRV Regs or CITY Code & Ordinances and related issues and set specific office hours at the CITY Hall on at least two (2) days per week to perform these functions.

F. Maintain a permit application, plans review, and filing system in conjunction with CITY staff to ensure that records of all permits and applications are properly maintained.

G. Upon receipt of written request and instructions from CITY, conduct other inspections for compliance with the codes indicated in Section 2A and with CITY'S applicable land use requirements, housing code or building maintenance code, and other ordinances and regulations and notify CITY of any existing or potential violations.

H. Coordinate with other CITY functions and departments for plans and permit application review, permit and Certificate of Occupancy issuance, field enforcement, and compliance with CITY'S ordinances and regulations for utilities and land use requirements.

I. Assist the CITY in ensuring the Building & Inspection Services Operating Plan complies with all State regulations associated with the delegation of building inspection programs.

3. SERVICE PROVIDERS CONTRACTOR may use employees, agents, or independent contractors to perform the services required by it under the terms of this Contract so long as such employee, agent or independent contractor is properly certified. If any incompatibilities or conflicts arise involving CONTRACTOR's employees, agents or independent contractors, CONTRACTOR and CITY agree to meet and make a good faith attempt to resolve any such incompatibility or conflict.

4. COMPENSATION. As compensation for the services to be provided by CONTRACTOR to CITY under the terms of this Contract, except for activities or services provided by CONTRACTOR to CITY under the terms of Paragraph 2.H above, City shall pay to CONTRACTOR for building, mechanical, plumbing, electrical, manufactured home setup, manufactured home and recreational vehicle park permits for which services were performed or to be performed by CONTRACTOR. Payment to CONTRACTOR shall be based on the fees noted in Paragraph 4 (A), (B), (C), and (D) and shall not include or be based on any additional CITY fees the CITY may collect. For activities or services provided by CONTRACTOR to CITY under the terms of Paragraph 2.H above, CITY shall pay CONTRACTOR in accordance with the rates set forth below.

   A. Mileage will be reimbursed at the current Federal mileage rate for inspection services performed within Lebanon city limits.

   B. Mileage for on call or vacation coverage inspector or meetings requested by CITY in the absence of the daily inspector will be reimbursed by City to CONTRACTOR at a flat fee of $50.00 per workday.

   C. City agrees to pay CONTRACTOR a percentage of the plan check review fees collected based on the schedule below:

      a. Contract year one (7/1/24 – 6/30/25): 75% plan review fees
      b. Contract year two (7/1/25 – 6/30/26): 80% plan review fees
      c. Contract year three and through the remaining term of the contract: 85% plan review fees.

      Plan check fees include all plan reviews and Fire and Life Safety Review fees collected by the City. No additional charge will be assessed for the second plan review. Each subsequent review may be charged a review fee at an hourly rate of $130/hour at the discretion of the Building Official.

   D. City agrees to pay Contractor hourly based on the Contractor's current rate of $130/hour for inspection services; reinspection services after the third failed inspection; ordinance investigation/enforcement and all work where no Specialty Code permit has been issued or is applicable only with CITY pre-authorization; and licensed structural engineer review/consult where required for essential facilities as authorized by the CITY. This hourly rate subject to review annually by CONTRACTOR and City.

5. PAYMENT. Compensation due CONTRACTOR by CITY shall be paid as follows:

A. CONTRACTOR shall submit a billing statement(s) for payment of CONTRATOR'S share of fees collected during the previous month by the 5th day of the immediately following month and CITY shall pay such billing statement(s) on or before the 25th day of the month in which it is received. In addition, CITY agrees to pay CONTRACTOR a late payment charge of 1.5% per month for any billing statement(s) received by CITY on or before the 5th day of the month which is not paid by the 25th day of that month.

B. Payment by CITY of any such billing statement shall release CITY from any further payment obligation to CONTRACTOR for services performed or expenses incurred as of the date of the billing statement.

6. CITY'S OBLIGATIONS In order to facilitate the services to be provided by CONTRACTOR to CITY under the terms of this Contract, CITY to do the following:

A. Receive all permit applications and messages and promptly advise CONTRACTOR of such receipt.

B. Make sufficient meeting and office space available to CONTRACTOR at CITY Hall to allow CONTRACTOR to perform all of its obligations under the terms of this Contract.

C. Issue permits, collect fees, and provide related administrative services.

D. Require all applicants to pay building, mechanical, plumbing, and manufactured home permit fees, plan check fees, and manufactured home park and recreational vehicle park fees prior to the issuance of any permit. CITY shall charge fees in accordance with its: (i) building, mechanical, electrical, plumbing, and manufactured home set up and recreational vehicle park permit fee schedules; (ii) valuation schedules, and (iii) any additional fees assessed or required by CITY related to the building inspection program. ORS 455.210 shall govern maximum structural, plumbing, electrical, mechanical, manufactured home set up and recreational vehicle park permit fees.

E. Review plans for compliance with CITY'S Development Code and other applicable CITY ordinances and requirements and notify CONTRACTOR in writing of any concerns or issues by notation on the building plans.

F. Maintain all permit records in accordance with records retention laws.

7. CONTRACTOR IDENTIFICATION NUMBER CONTRACTOR shall furnish CITY with CONTRACTOR's employer identification number, as designated by the Internal Revenue Service upon request.

8. CITY'S REPRESENTATIVE. CITY'S authorized representative for the purposes of this Contract shall be The COMMUNITY DEVELOPMENT DIRECTOR.

9. CONTRACTOR'S REPRESENTATIVE CONTRACTOR's authorized representative for the purposes of this Contract shall be Jack Applegate, CBO, CHI , 144 East 14th Ave., Eugene, Oregon 97401, phone 541-484-9043, fax 541-484-6859.

10. CONTRACTOR AS INDEPENDENT CONTRACTOR

A. Contractor's services shall be provided under the general supervision of CITY or its employees or designees; however, CONTRACTOR shall be an independent contractor and shall be entitled to no compensation other than the compensation provided for under Section 4 of this Contract.

B. CONTRACTOR acknowledges that it shall not be entitled to any employee benefits to which an employee of CITY would be entitled and shall be solely responsible for all payments of taxes required by law. If CONTRACTOR is found by a court of law or an administrative agency to be an employee of CITY for purposes of taxes or benefits CITY is required to pay for or to employees, CITY shall be entitled to repayment by CONTRACTOR to the full extent of any benefits or other remuneration CONTRACTOR may receive from CITY as result of said finding and to the full extent of any payments CITY is required to make to CONTRACTOR or to a government entity) as a result of said finding. CONTRACTOR shall obtain workers' compensation coverage for its employees and agents as required by Oregon law.

C. CONTRACTOR hereby represents that to its knowledge no employee of CITY or any partnership or corporation in which a CITY employee has an interest, has, or will receive any remuneration of any description from CONTRACTOR, directly or indirectly, in connection with the letting or performance of this Contract, except as otherwise specifically declared in writing.

D. Notwithstanding paragraphs 10A, 10B, 10C, or any other paragraph of this Contract, CONTRACTOR and its officers, employees, agents, and subcontractors are and shall operate and be considered as agents of CITY for all purposes relating to the Oregon Tort Claims Act, ORS 30.260 to 30.300.

11. SUBCONTRACT - ASSIGNMENTS AND DELEGATION

A. Subject to paragraph 10D above, CONTRACTOR shall be fully responsible for the acts or omissions of its employees, agents, and subcontractors and neither the approval by CITY of any employee, agent or subcontractor of CONTRACTOR nor anything contained herein shall be deemed to create any contractual relation between such employee, agent, or subcontractor and CITY.

B. This Contract, and all of the covenants and conditions hereof, shall inure to the benefit of and be binding upon CITY and CONTRACTOR respectively and their legal representatives and successors. Except as otherwise provided herein, CONTRACTOR shall not assign any rights nor delegate any duties incurred by this

Contract, or any part hereof without the written consent of CITY, and any assignment or delegation in violation hereof shall be void.

12. TERMINATION OF CONTRACT. CONTRACTOR or CITY may terminate this Contract at any time upon not less than ninety (90) days prior written notice to the other party. In addition, CITY may terminate this contract upon not less than ten (10) days written notice to CONTRACTOR if CONTRACTOR breaches any of the terms herein or in the event of any of the following: Insolvency of CONTRACTOR; voluntary or involuntary petition in bankruptcy by or against CONTRACTOR; appointment of a receiver or trustee for CONTRACTOR; or an assignment for benefit of creditors of CONTRACTOR.

13. ACCESS TO RECORDS CITY shall have access to such books, documents, papers, and records of CONTRACTOR as are directly pertinent to the services performed under the terms of this Contract for the purpose of conducting an audit or examination or obtaining excerpts and transcripts.

    A. CONTRACTOR shall have access to CITY building department budget for review upon request. CITY shall be responsible for ensuring building department dedicated funds are not used for other purposes as required under ORS 455.210 (3)(c).

14. FORCE MAJEURE Neither CITY nor CONTRACTOR shall be considered in default because of any delays in completion of responsibilities hereunder due to causes beyond its control and without fault or negligence on the part of the party so disenabled, including, but not limited to: an act of nature or of a public enemy, volcano, earthquake, fire, flood, epidemic, quarantine, restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or suppliers due to such cause; provided that the party so disenabled shall within ten (10) days from the beginning of such delay to notify the other party in writing of the causes of such delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation.

15. NONWAIVER. The failure of either party to insist upon or enforce strict performance by the other party of any of the terms of this contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of a party's right to assert or rely upon such terms or rights on any future occasion.

16. ATTORNEY'S FEES. In the event suit, action or arbitration is instituted to enforce any of the terms of this Contract, the prevailing party shall be entitled to recover from the other party such sum as the court or arbitrator may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

17. APPLICABLE LAW. This Contract will be governed by the laws of the State of Oregon.

18. CONFLICT BETWEEN TERMS. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this Contract and the proposal of CONTRACTOR, this Contract shall control, and nothing herein shall be considered as an acceptance of the terms of said proposal conflicting herewith.

19. INDEMNIFICATION CONTRACTOR agrees to indemnify and to hold harmless the CITY, its Officers, Employees, and Agents against and from any and all loss, claims, actions, suits, including costs, and attorney's fees, for or on account of injury, bodily or otherwise, to, or death of persons, damage to or destruction of property belonging to CITY, CONTRACTOR or others, resulting from, arising out of, or in any way connected with CONTRACTOR'S acts which are outside the scope of CONTRACTOR'S duties to CITY under this Contract or for which CONTRACTOR is not eligible for representation and indemnification by CITY under the terms of the Oregon Tort Claims Act. CONTRACTOR agrees to defend all such claims on behalf of the CITY, whether frivolous or not.

CITY acknowledges and agrees that CONTRACTOR, and its officers, employees, agents, and subcontractors, for purposes of ORS 30.260-.300 (the Oregon Tort Claims Act), are agents of CITY while acting in the course and scope of carrying out CONTRACTOR'S duties and responsibilities under the terms of this Contract and while so acting they are covered by CITY'S insurance and entitled to representation and indemnification as provided under the Oregon Tort Claims Act.

20. INSURANCE. Prior to providing any of the services required under the terms of this Contract, CONTRACTOR, at CONTRACTOR's sole cost and expense, shall secure and continue in force during the term of this Contract the following insurance with an insurance company acceptable to CITY:

    A. General Liability and Property Damage Insurance with limits of not less than $1,000,000 for personal injury, $1,000,000 for comprehensive automobile liability and $1,000,000 for broad form property damage coverage. Satisfactory evidence of such insurance shall be provided to CITY.

    B. Workers' Compensation from the State Accident Insurance Fund or from a responsible private carrier. Private insurance shall provide the schedule of employee benefits required by law.

21. ARBITRATION any controversy or claim arising out of or relating to this Contract, including without limitation, the making, performance, interpretation, or enforcement of the Contract and any provisions contained herein, shall be settled by binding arbitration in Linn, County, Oregon, in accordance with ORS 36.600-36.740, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy.

22. COMPLETE CONTRACT. This Contract and any referenced attachments constitute the complete Contract between CITY and CONTRACTOR and supersede all prior written or oral discussions or agreements.

Signature Page for Professional Services Contract between City of Lebanon and Northwest Code Professionals, LLC

THE CITY OF Lebanon

By: Kelly Hart
Date: 6/13/2024

KELLY HART
COMMUNITY DEVELOPMENT DIRECTOR

NORTHWEST CODE PROFESSIONALS, LLC

an Oregon limited liability company

By: Jack E. Applegate
Date 6/13/2024

JACK APPLEGATE, CBO, MANAGER