



# PROFESSIONAL SERVICES AGREEMENT

AGREEMENT NO. WW2023 - 002

## PREAMBLE

This Contract, made and entered into this 19th day of December 2023, by and between JNM Services, LLC, hereinafter called "Consultant", and the CITY OF SANDY, a municipal corporation of the State of Oregon, hereinafter called "City".

**WHEREAS**, City has need for the professional services of a party with the particular training, ability, knowledge and experience possessed by Consultant;

**WHEREAS**, Consultant represents that Consultant has sufficient experience and expertise to perform the services under this Contract;

**WHEREAS**, Consultant has submitted a Statement of Qualifications for services in response to a Request for Qualifications issued by City and City selected Consultant to provide desired services;

**WHEREAS**, during the term of this Contract, City and Consultant may, from time to time, enter into task orders to this Contract for particular work to be performed.

## **THEREFORE,**

This Contract will govern the relationship of the parties whenever City selects Consultant to perform services on an as-needed basis. The parties will enter into a task order to this Contract that contains a scope of work and price and an Exhibit A including Special Terms and Conditions. No provision of this Contract will be construed as generating a minimum amount of work.

Consultant's services will be performed with the same degree of care, skill, diligence, competency, and knowledge that is ordinarily exhibited and possessed by other professionals in good standing in the same or similar field and community as Consultant.

In performing the services, Consultant will be an independent Consultant and not an employee of City. City will have the right to verify that Consultant's performance meets the requirements of this Contract but will not have the right to control the manner of Consultant's or Consultant's subconsultants' performance.

No provision of this Contract will be construed to create a partnership, joint venture, employer-employee, landlord-tenant or principal-agent relationship.



**WITNESSETH:**

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

**1. SCOPE OF WORK**

The scope of work for professional services will be developed for each task order to this Contract in the form of Attachment A.

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 **December 31, 2024**.

This Contract contains a renewal option at the City's discretion for an additional two calendar years.

**3. PAYMENT**

City agrees to pay, and Consultant agrees to accept, in full payment for the performance of this contract and subsequent Task Orders, according to the unit prices submitted in Attachment A attached hereto and by this reference made a part hereof and mutually agreed upon and accepted Task Order(s). The Unit Prices in Attachment A may be adjusted annually upon mutual agreement of the parties to reflect inflation and changes in labor and materials costs.

The maximum value of any Task Order or group of Task Orders associated with the same project is \$500,000, irrespective of the time frame or year in which the work is performed.

**4. CHANGES**

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

**5. INDEPENDENT CONSULTANT STATUS**

Consultant agrees and certifies that:

- A. Consultant is engaged as an independent Contractor and will be responsible for any federal or state taxes applicable to payment under this contract;
- B. Consultant 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. Consultant is not currently an employee of the federal government or the state of Oregon;
- D. Consultant is not a contributing member of the Public Employees' Retirement System;
- E. Consultant certifies it meets the specific Independent Consultant Standards of ORS 670.600;
- F. Consultant 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**

Consultant shall not enter into any subcontracts for any of the work required by this contract, excepting those portions of the work specifically described in a mutually agreed upon and accepted Task Order 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. Consultant shall:
  - (1) Make payment promptly, as due, to all persons supplying Consultant 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 Consultant 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 Consultant by reason of such contract.
- C. The payment of a claim in this manner shall not relieve Consultant or Consultant's surety from obligation with respect to any unpaid claims.



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

Consultant 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 Consultant, of all sums which Consultant agrees to pay for such services and all moneys and sums which Consultant 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.

Consultant, its subconsultants, 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 Consultant 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 Consultant shall be foreclosed from the right to collect for any overtime under this contract unless a claim for payment is filed with Consultant within ninety [90] days from the completion of the contract, providing Consultant 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**

Consultant shall perform such additional work as may be necessary to conform the work to the scope of work in Exhibit A or to correct errors in the work that are caused by the Consultant not meeting the Standard of 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 Consultant, may terminate the whole or any part of the contract:

- A. If Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant, 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 Consultant to transfer and deliver such partially completed reports or other documentation that Consultant has specifically developed or specifically acquired for the performance of this contract.

For any use by the City of the materials for any purpose other than the one for which Consultant prepared the materials without the Consultant's professional involvement, the City shall release Consultant from any and all claims and, to the fullest extent permitted by law, shall indemnify, defend, and hold harmless the Consultant, its officers, employees and subconsultants from and against any damages, liabilities or costs.

## **14. INDEMNITY AND HOLD HARMLESS**

Consultant shall defend, indemnify and hold City, its officers, agents and employees, harmless against all liability, loss or expenses, including attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including



death) to persons or property to the extent caused by any 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**

Consultant shall obtain, prior to the commencement of the contract, and shall maintain in full force and effect for the term of this contract, at Consultant's expense, commercial general liability insurance and automobile liability insurance for the protection of Consultant and City, its officers, boards, commissions and employees. These policies shall be issued by a company authorized to do business in the state of Oregon, protecting Consultant or Subconsultants 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. The policies shall be written on an occurrence basis and coverage shall be a minimum of \$2,000,000 per occurrence and \$2,000,000 in the aggregate. 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 under the above policies, and providing City will receive at least thirty [30] days' written notice of cancellation or material modification of the insurance contract.

In addition to the insurance otherwise required under this contract, Consultant shall obtain, at Consultant's expense, and keep in effect during the term of this contract, professional liability insurance covering damages caused by an error, omission or any negligent acts. The limit per claim shall not be less than \$2,000,000. Annual aggregate limit shall not be less than \$2,000,000.

If such insurance is written on a claims-made basis, the 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 or abandonment of the project 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 Consultant.

Consultant 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 CARE**

Consultant 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 Consultant no later than fifteen [15] days before the termination date. Consultant 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 Consultant under this contract shall be made available to any individual or organization by Consultant 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 Consultant 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 Consultant to defend itself from any suit or claim.

## **19. PUBLICATION RIGHTS / RIGHTS IN DATA**

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

Consultant 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 Consultant or City personnel, or jointly by Consultant and City personnel, can be used by either party in any way it may deem appropriate.

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

This contract shall not preclude Consultant 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**

Consultant agrees that City and its authorized representatives shall have access to the books, documents, papers and records of Consultant 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**

Consultant 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, Consultant 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.

Moreover, the City reserves the ability to utilize Water Infrastructure Finance and Innovation Act (WIFIA) funding for purposes of payment of services provided and therefore requires Consultant to accept the following conditions:

**Debarment and Suspension.** Contractor certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 2 CFR part 180 and part 1532 (per Executive Order 12549, 51 FR 6370, February 21, 1986) or who is prohibited under Section 306 of the Clean Air Act or Section 508 of the Clean Water Act to participate in the [Project]. Suspension and debarment information can be accessed at <http://www.sam.gov>. Contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.

**Federal Lobbying Restrictions (31 U.S.C 1352).** Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract.





These requirements are implemented for USEPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Contractor shall complete and submit to the City the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. Contractor shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

**23. FOREIGN CONSULTANT**

If Consultant is not domiciled in or registered to do business in the state of Oregon, Consultant 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. Consultant 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 Consultant 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. Consultant, by the signature below of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts.

**25. FORCE MAJEURE**

Neither City nor Consultant shall be held responsible for delay or default caused by fire, riot, epidemics, pandemics, declared states of emergency, closing or reduction of force by the Consultants or governmental permit reviewing entities, the enactment of governmental actions which cause delays or limit travel, acts of God, or war where such cause was beyond, respectively, the reasonable control of City or Consultant. Consultant 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 Agreement 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. Consultant, by signature of its authorize 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.

**28. CONSENT DECREE**

The City has entered into a Consent Decree with the Environmental Protection Agency. The City is required to provide a copy of this Consent Decree to any contractor retained to perform work required under this Consent Decree and has attached a copy as Attachment B. The performance of the work shall be in conformity with the terms of this Consent Decree.

**CONSULTANT**

Employer ID #: \_\_\_\_\_

\_\_\_\_\_  
(Name)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Check one:

- Sole Proprietor
- Partnership
- Corporation
- Governmental
- Non-Profit

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_, 2023  
Date

Individual S.S.N. or



**CITY OF SANDY**

By: \_\_\_\_\_

Tyler Deems  
City Manager  
City of Sandy  
39250 Pioneer Blvd.  
Sandy, OR 97055

\_\_\_\_\_, 2023  
Date