

**City of St. Helens**  
**INDEPENDENT CONTRACTOR AGREEMENT**

This INDEPENDENT CONTRACTOR AGREEMENT (this “Agreement”) is made and entered into by and between the **City of St. Helens** (the “City”), an Oregon municipal corporation, and **E2C Corp.** (“Contractor”), collectively the “Parties”.

**RECITALS**

- A. The City is in need of services to produce and manage the “Events” listed in Attachment A attached hereto.
- B. The City has determined Contractor to be qualified and capable of performing the services sought by the City.

**NOW, THEREFORE**, the Parties agree as follows:

**AGREEMENT**

- 1. Engagement.** The City hereby engages Contractor to provide services related to Special Events Management (the “Services”), and Contractor accepts such engagement. The principal contact for Contractor shall be Tina Curry, phone (360) 241-6456.
- 2. Scope of Work.** The duties and responsibilities of Contractor, including a schedule of performance, shall be as described in Attachment A attached hereto and incorporated herein by reference.
- 3. Term.** This Agreement shall become effective upon the full execution by the Parties (the “Effective Date”) and shall terminate on December 31, 2023, unless sooner terminated in accordance with the terms stated herein (the “Initial Term”). This Agreement may be renewed by mutual written agreement of the Parties.
- 4. Compensation/Expenses.** The terms of compensation for the Contractor shall be as provided in Attachment C. Contractor shall perform and complete the Services set forth in Attachment A within a budget agreed to by the Parties (the “General Budget”). Any expenses in the General Budget, including asset purchases, equal to \$50,000.00 or more, shall require pre-approval from the City before making any such expenditure or purchase.
  - 4.1.** The City shall maintain a reserve account equal to the pro rata share of the Contractor’s fee, amount of annual building lease obligations and utilities for leased premises (the “Reserve Account”). The Reserve Account is not part of the General Budget described in Paragraph 4 above and shall not be considered funds to be used by Contractor without written approval from the City, at its sole discretion. Contractor will work within the budget resulting from and created by tourism activities listed in “Attachment A.”
  - 4.2.** Contractor shall be responsible for all receivables, payables and disbursements pertaining to tourism budget. A third party shall have access to all income,

expenses and subcontracted ticketing sites held in reference to Contractor's work for City throughout the year. The designated third party, at City's expense, shall also conduct an audit of all income, expenses, and subcontracted ticketing sites on at least an annual basis, or more frequently as needed, as determined at the City's discretion.

**4.3.** Contractor shall provide the City Administrator access to all electronic ticketing accounts to allow tracking and verification of the accounting provided by Contractor to City. To the extent possible, Contractor shall discourage the use of cash payments at Events and will be provided a "Square" card reader that directly connects to the bank accounts. Additionally, all cash income will be accounted for by a duplicate signature prior to depositing as a cash receipt. Contractor will be provided a secure, locked location, where cash receipts may be held during weekend events.

**4.4.** Any and all remaining funds received by Contractor, after the payment of budgeted and approved expenses (including any fees), shall be transferred to the City by December 28<sup>th</sup> of each year. Provided the Parties agree to renew or continue this Agreement, such funds may be invoiced and returned to Contractor to provide funding for approved future events in the upcoming year.

**4.5.** The City, at its discretion, may suspend or withhold payments in the event Contractor fails to comply with requirements of this Agreement.

**4.6.** Any provision of this Agreement that is held by a court to create an obligation that violates the debt limitation provision of Article XI, Section 9 of the Oregon Constitution shall be void. The City's obligation to make payments under this Agreement is conditioned upon appropriation of funds pursuant to ORS 294.305 through 294.565.

**5. Independent Contractor.** Contractor is engaged by the City as an independent contractor in accordance with the standards prescribed in ORS 670.600. Contractor shall not be entitled to any benefits that are provided by the City to City employees. Contractor is not an officer, employee, or agent of the State or Department as those terms are used in ORS 30.265 of the Oregon Tort Claims Act, and Contractor is not to be considered an officer, employee or agent of the City for any purpose. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.

All persons employed by Contractor and that may participate in Contractor's performance of the Services as provided in this Agreement, shall be considered to be its employees, subcontractors, agents or principals and not principals, agents or employees of the City. Contractor covenants and agrees not to hold itself/himself out as an employee of the City, and Contractor acknowledges that it/she/he and its employees have no right or entitlement in or to any right, privilege or benefit which would accrue to an employee of the City for any purposes, including, but not limited to, the application of the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Revenue and Taxation Code relating to income tax withholding at the source of income, the Workers' Compensation Insurance Code, 401(k), and other benefit payments or third-party liability claims.

**6. Advertising and Document Ownership and Work Made for Hire.** The City currently owns a number of websites including DiscoverColumbiaCounty.com, SpiritofHalloweentown.com as well as social media sites including Dark Market USA, Columbia County Events and others, that the Contractor will have access to in order to convey appropriate marketing for Events. Any ads or materials created for public use shall become the property of the City. Any reuse or alteration of any work produced under this Agreement, except as contemplated herein, shall be at the City's sole risk.

All materials produced for the City by Contractor or Contractor's employees performing services covered by this Agreement shall be deemed "work made for hire" within the meaning of the U.S. Copyright Act, as amended. If any portion of such work is determined not to be a work made for hire, Contractor hereby sells, assigns and transfers to the City all present and future right, title and interest, including all copyrights and trademarks, so that all copyrights for the work related to the work will immediately and automatically be the sole and absolute property of the City. Contractor will, at the expense of the City, execute any instruments and do all other things reasonably requested the City (both during and after the term of this Agreement) in order to vest more fully in the City any and all ownership rights in the transferred materials.

**7. Notices.** All notices or other communications required or permitted hereunder shall be in writing, and shall be considered as properly given if (a) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (b) by delivering same in person to the intended addressee, (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (d) by electronic mail at the electronic mail address commonly used by the recipient in the conduct of communications between the Parties. Notice sent pursuant to clause (a) shall be effective three (3) business days after its deposit with the United States Postal Service; notice sent pursuant to clause (b) shall be effective upon receipt by the intended recipient; notice sent pursuant to clause (c) shall be effective upon the date delivered by such a commercial delivery service; and notice given by email delivery pursuant to clause (d) shall be effective upon being sent by the sender. Notices sent by mail or email shall be addressed as follows:

City: City of St. Helens  
Attn.: City Administrator  
265 Strand Street  
St. Helens, OR 97051  
Email: jwalsh@sthelensoregon.gov

Contractor: E2C Corp  
Attn: Tina Curry  
2316 NE Minnehaha St  
Vancouver, WA 98665  
Email: \_\_\_\_\_

Any Party may designate a different address by giving notice to the other Parties delivered in accordance with the provisions of this Paragraph.

**8. Standard of Care.** Contractor shall perform the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.

**9. Consequential Damages.** Neither Party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by either Party's breach of contract, willful misconduct, negligent act or omission, or other wrongful act.

**10. Insurance.** At all times during the term of this Agreement, Contractor shall carry, maintain and keep in full force and effect a policy or policies of insurance as specified in Attachment B attached hereto and incorporated herein by reference.

**10.1.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew coverage without thirty (30) days' prior written notice to the City.

**10.2.** Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, the City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon. If the City procures such insurance, the City shall retain any cost incurred for same from moneys due Contractor hereunder.

**10.3.** At all times during the term of this Agreement, Contractor shall maintain on file with the City a Certificate of Insurance or a copy of actual policies acceptable to the City showing that the aforesaid policies are in effect in the required amounts. The policies shall contain an endorsement naming the City, its officers, employees and agents, as additional insured's (except for the professional liability and workers' compensation insurance). Renewal certificates shall be sent to the City at least ten (10) days prior to coverage expiration.

**10.4.** The insurance provided by Contractor shall be primary to any coverage available to the City. The insurance policies (other than workers' compensation) shall include provisions for waiver of subrogation. Contractor shall be responsible for any deductible amounts outlined in such policies.

**11. Workers' Compensation.** Contractor shall carry workers' compensation insurance as and to the extent required by law, and shall provide the City with appropriate proof of such insurance reflecting the required coverage prior to commencement of any Services. Contractor assumes full responsibility for any liability and exposure under law relating to workers' compensation because of any performance of Services under this Agreement and will hold the City harmless for and from any industrial accident or liability that is attributable to Contractor.

**12. Termination.** At any time and without cause, City or Contractor shall have the right in their sole discretion to terminate this Agreement by giving 90 days written notice to the other Party. If City terminates this Agreement pursuant to this section, the City shall pay Contractor for services rendered to the date of termination or 90 days compensation whichever is more.

**13. No Third-Party Rights.** This Agreement shall not create any rights in or inure to the benefit of any parties, whether directly, indirectly or otherwise, other than the City and Contractor.

**14. Modification.** Any modification of the provisions of this Agreement shall be set forth in writing and signed by the Parties.

**15. Waiver.** A waiver by a Party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

**16. Indemnification.** Contractor shall defend, indemnify and hold harmless the City and its officers, employees, elected officials, volunteers and agents from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorneys' fees ("Claims") that arise from the negligent or other wrongful acts, omissions, or willful misconduct of Contractor or officers, employees, agents, or subcontractors of Contractor, except to the extent that the Claims arise out of the negligence or other wrongful acts or omissions of the City or the City's officers, employees, or agents.

**17. Governing Laws.** This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court for Columbia County, Oregon.

**18. Compliance with Law.**

**18.1.** Contractor shall comply with all applicable federal, state and local statutes, ordinances, administrative rules, regulations and other legal requirements in performance of this Agreement.

**18.2.** Contractor shall comply with applicable provisions of ORS 279B.020, 279B.220, 279B.225, 279B.230 and 279B.235. Pursuant to ORS 279B.235, any person employed by Contractor who performs Services shall be paid at least time and a half pay for all overtime in excess of forty (40) hours in any one (1) week, except for persons who are excluded or exempt from overtime pay under ORS 653.010 through 653.261 or under 29 USC Sections 201 through 209.

**18.3.** Contractor is a "subject employer," as defined in ORS 656.005, and shall comply with ORS 656.017.

**18.4.** Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations and shall also comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

**19. Confidentiality.** Contractor understands the nature of the Services means the Contractor may be privy to information that is confidential or proprietary and shall not be disclosed to any third person or entity without the City's consent either during the term of this Agreement or after its termination.

**20. Publicity.** Contractor shall not use any data, pictures, or other representations of the City in its external advertising, marketing programs, or other promotional efforts except with prior specific written authorization from the City.

**21. Succession.** This Agreement shall inure to the benefit of and shall be binding upon each of the Parties hereto and such Parties' partners, successors, executors, administrators and assigns.

**22. Assignment.** This Agreement shall not be assigned by Contractor without the express written consent of the City. Contractor shall not assign Contractor's interest in this Agreement or enter into subcontracts for any part of the Services without the prior written consent of the City.

**23. Dispute Resolution.** Should a dispute arise between the Parties to this Agreement, it is agreed that such dispute will be submitted to a mediator prior to any litigation. The Parties shall exercise good-faith efforts to select a mediator who shall be compensated equally by both parties. Mediation shall be conducted in St. Helens, Oregon, unless both Parties agree in writing otherwise. Both Parties agree to exercise good-faith efforts to resolve disputes covered by this section through the mediation process. If a Party requests mediation and the other party fails to respond within ten (10) days, a mediator shall be appointed by the presiding judge of the Circuit Court of the State of Oregon for Columbia County upon request of either Party. The Parties shall have any rights at law or in equity with respect to any dispute not covered by this section. Nothing in this section shall preclude a Party from seeking equitable relief to enjoin a violation of this Agreement.

**24. Force Majeure.** Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the Parties so disabled, including, but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, pandemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other Party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim of additional compensation. Each Party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay and shall, upon cessation of the cause, diligently pursue performance of its obligation under this Agreement.

**25. Attorney Fees.** If legal action is commenced in connection with this Agreement, the prevailing Party in such action shall be entitled to recover its reasonable attorney fees and costs incurred herein at trial and on appeal.

**26. Inspection and Audit by the City.**

**26.1.** Services provided by Contractor and Contractor's performance data, financial records, and other similar documents and records of Contractor that pertain, or may pertain, to the Services under this Agreement shall be open for inspection by the City or its agents at any reasonable time during business hours. Upon request, copies of records or public

documents shall be provided to the City free of charge that do not conflict with any third party or contractor that requires nondisclosures to obtain engagement.

**26.2.** The City shall have the right to inspect and audit Contractor's financial records pertaining to the Services under this Agreement at any time during the term of this Agreement or within two (2) years following the termination of this Agreement.

**27. Entire Agreement.** This Agreement contains the entire agreement between the Parties and supersedes all prior written or oral discussions or agreements regarding the Services described herein.

**28. Severance.** If any provision of this Agreement is held to be invalid, it will not affect the validity of any other provision. This Agreement will be construed as if the invalid provision had never been included.

*Signatures on following page.*

**IN WITNESS WHEREOF**, the City has caused this Agreement to be executed by its duly authorized undersigned agents, and Contractor has executed this Agreement on the date written below.

**CITY:**

**CONTRACTOR:**

**CITY OF ST. HELENS**

Council Meeting Date: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Signature: \_\_\_\_\_

Print:

Print:

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_



# ATTACHMENT A

## Scope of Work

CITY OF ST. HELENS, OREGON

Special Event Coordination & Management

### PROGRAM OBJECTIVE

The primary objective of the City's Tourism program is to draw people to the St. Helens Community for a positive visitor experience. The strategy proposed for achieving this goal is to continue producing meaningful events and activities that draw visitors, fill hotel rooms, support local merchants and improve community identity and livability. In order to ensure sustainability, the program costs are expected to be fully recovered through event revenues and sponsorships.

### EVENT DESCRIPTIONS

Over the past several years the City has concentrated tourism investments into four major event programs ("Events"). These Events include 13 Nights on the River, Fourth of July, The Spirit of Halloweentown, and the annual Christmas Tree Lighting ceremony. These events include the following:

- **13 Nights on the River**

This popular 13 Nights on the River concert series has been a Thursday night favorite in Columbia View Park June through Labor Day. The event entails live music and other entertainment along with food and other vendors to attract citizens and visitors to our community.

- **Fourth of July**

The Fourth of July Independence Day has been a long-standing tradition on the St. Helens waterfront. The Contractor should expect to collaborate with community organizations in an effort to ensure a quality event while minimizing the impact on City's financial Transient Room Fee resources.

- **Spirit of Halloweentown**

This event has grown into an international sensation attracting tens of thousands of visitors to experience the magical place where Halloweentown was filmed in the late 1990's. The event has expanded from a modest community celebration into a month-long program where the City transforms and embraces the Spirit of Halloweentown. Past activities have included celebrity visitors, character actors, music, performances, meet and greet events, tractor rides, parking management, vendor management, festivals, tours, haunted houses, gift shop, and much more. The event provides the opportunity for community

organizations and nonprofits to generate revenue to support community programs throughout the year while supporting local business and covering the expenses of operating the event.

- **Christmas Tree Lighting**

The Christmas Tree Lighting ceremony occurs annually on the evening the Portland Christmas Ships visit in December. This event oversees the decorating and take down of the Court House Plaza decorations including the Christmas Tree lighting and activities the night of the event. Traditionally, the City assists in the tree installation, decorations The City provides the ship captain's dinner, Santa and Mrs. Claus visit, amplified or live music, free hot chocolate, warming barrels and in 2018 there was a tribute fireworks program.

- **Other Events**

The event contractor may opt to produce additional events and activities throughout the year to ensure program sustainability. Such additional events will be authorized by the City and may or may not receive additional compensation.

## **SCOPE OF SERVICES**

### **Event Coordination & Management**

Contractor will be responsible for coordinating and managing City events from inception to completion. At Contractor's discretion, these duties may include the following:

- Advertise, promote and market events
  - Manage the City's social media and event accounts (Discover Columbia County, Spirit of Halloweentown Facebook and others)
  - Create, manage and reconcile event budgets
  - Track event revenue and expense
  - Solicit sponsorships for events
  - Create and/or coordinate informational brochures for visitors
  - Provide adequate event staffing and management services
  - Recruit musical talent
  - Coordinate with vendors
  - Ensure clean-up during and after each event
  - Coordinate with City and County departments to ensure good communication and event logistical support
  - Utilize community volunteers when possible
  - Ensure deliverables are on time, on budget and meet City expectations
- Report regularly to the City Council and staff

**ATTACHMENT B  
INSURANCE REQUIREMENTS**

Contractor and its subcontractors shall maintain insurance acceptable to the City in full force and effect throughout the term of this Contract.

It is agreed that any insurance maintained by the City shall apply in excess of, and not contribute toward, insurance provided by Contractor. The policy or policies of insurance maintained by Contractor and its subcontractors shall provide at least the following limits and coverage:

TYPE OF INSURANCE	LIMITS OF LIABILITY		REQUIRED FOR THIS CONTRACT
<b>General Liability</b>	Each occurrence General Aggregate Products/Comp Ops Aggregate Personal and Advertising Injury	\$1,000,000 \$2,000,000 \$2,000,000 \$1,000,000 w/umbrella or \$1,500,000 w/o umbrella	YES/NO
Please indicate if Claims Made or Occurrence			
<b>Automobile Liability</b>	Combined Single – covering any vehicle used on City business	\$2,000,000	YES/NO
<b>Workers' Compensation</b>	Per Oregon State Statutes If workers compensation is not applicable please initial here: _____ State the reason it is not applicable here: _____		YES/NO
<b>Professional Liability</b>	Per occurrence  Annual Aggregate	\$500,000 or per contract \$500,000 or per contract	YES/NO

Contractor's general liability and automobile liability insurance must be evidenced by certificates from the insurers. The policies shall name the City, its officers, agents and employees, as additional insureds and shall provide the City with a thirty (30)-day notice of cancellation.

Workers' compensation insurance must be evidenced by a certificate from the insurer. The certificate need not name the City as an additional insured but must list the City as a certificate holder and provide a thirty (30)-day notice of cancellation to the City.

Certificates of Insurance shall be forwarded to:  
 City Administrator  
 City of St. Helens  
 265 Strand Street  
 St. Helens, OR 97051

Contractor agrees to deposit with the City, at the time the executed Contract is returned, Certificates of Insurance and Binders of Insurance if the policy is new or has expired, sufficient

to satisfy the City that the insurance provisions of this Contract have been complied with and to keep such insurance in effect and the certificates and/or binders thereof on deposit with the City during the entire term of this Contract. Such certificates and/or binders must be delivered prior to commencement of the Work.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury or loss caused by negligence or neglect connected with this Contract.

**ATTACHMENT C**  
**TERMS OF COMPENSATION**

City agrees to pay Contractor \$120,000 (One Hundred Twenty Thousand dollars) paid in 12 monthly installments for and in consideration of the faithful performance of the services. Any reimbursable approved expenses shall be billed at cost without markup. Contractor's fee for approved management of sub-contractors, and consultants will be a maximum of five percent (5%) .

Monthly fee shall be invoiced to the City by Contractor. City may pay within seven (7) days upon receipt of the invoice.