

PERSONAL SERVICES AGREEMENT

This PERSONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into by and between the City of Sweet Home, a municipality of the State of Oregon (the “city”) and Matt Brown Consulting (“Contractor”).

RECITALS

- A. The City is in need of personal services for financial administration assistance, and Contractor represents that it is qualified and prepared to provide such services.
- B. The purpose of this Agreement is to establish the services to be provided by Contractor and the compensation and terms for such services.

AGREEMENT

Engagement

The City hereby engages Contractor to provide services (“Services”) related to financial administration, and Contractor accepts such engagement. The principal contact for Contractor shall be Matt Brown, phone 503-705-1041, email mattbrown@mattbrownconsulting.com.

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.

Term

Subject to the termination provisions of Section 10 of this Agreement, this Agreement shall commence once executed by both parties and shall terminate on 12/31/2023. The city reserves the exclusive right to extend the contract for a period of two (2) additional years. Contractor will be given at least two (2) months’ notice if city intends not to renew contract. Such extensions shall be in writing with terms acceptable to both parties.

Compensation

The terms of compensation for the initial term shall be as provided in Attachment A.

Payment

The city agrees to pay contractor for and in consideration of the faithful performance of the Services, and Contractor agrees to accept from the city as and for compensation for the faithful performance of the Services, the fees outlined in Attachment A. Reimbursable expenses shall be billed at cost without markup and shall include travel and related expenses, and reproduction of documents or reports.

Contractor shall make and keep reasonable records of work performed pursuant to this Agreement and shall provide monthly billings to the city. Following approval by the city manager, billings shall be paid in full within thirty (30) days of receipt thereof. The city shall notify Contractor of any disputed amount within fifteen (15) days from receipt of the invoice, give reasons for the objection, and promptly pay the undisputed amount. Disputed amounts may be withheld without penalty or interest pending resolution of the dispute. The city may suspend or withhold payments if contractor fails to comply with any requirement of this agreement.

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 employees.

Document Ownership

Contractor shall retain all common law, statutory and other reserved rights, including copyrights, in all work products, including, but not limited to, documents, drawings, papers, computer programs and photographs, performed or produced by Contractor for the benefit of the city under this Agreement, except that all copies of such plans, designs, calculations and other documents and renditions provided to the city shall become the property of city who may use them without contractor’s further permission for any lawful purpose related to the project. Upon

9.2, 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 Agreement and later orders Contractor to resume those services after determining Contractor was not at fault, Contractor shall be entitled to reasonable damages actually incurred, if any, because of the suspension.

In the event of termination of this Agreement due to the fault of the Contractor, City may immediately cease payment to Contractor, and when the breach is remedied, City may recover from Contractor the amount by which the price for those substitute services exceeds the price for the same services under this Agreement, along with any additional amounts for loss and damage caused to the City by the breach, and withhold such amounts from amounts owed by City to Contractor. If the amount due Contractor is insufficient to cover City's damages due to the breach, Contractor shall tender the balance to City upon demand.

City may terminate all or part of this Agreement at any time for its own convenience by providing three (3) months written notice to Contractor. Upon termination under this paragraph, Contractor shall be entitled to compensation for all services properly rendered prior to the termination, including reasonable costs actually incurred in closing out the Agreement. In no instance shall Contractor be entitled to overhead or profit on work not performed.

No Third-Party Rights

This Agreement shall not create any rights in or inure to the benefit of any parties other than the City and Contractor.

Modification

Any modification of the provisions of this Agreement shall be set forth in writing and signed by the parties.

Waiver

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach. All waivers shall be done in writing.

Indemnification

For claims for other than professional liability, Contractor shall defend, save and hold harmless City, its officers, agents and employees from all damages, demands, claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities or omissions of Contractor, its subcontractors, sub-consultants, agents or employees under this Agreement. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Contractor unrelated to the quality of professional services provided by Contractor.

For claims for professional liability, Contractor shall save, and hold harmless City, its officers, agents and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor, its subcontractors, sub-consultants, agents or employees in the performance of professional services under this Agreement. A claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly from the quality of the professional services provided by Contractor, regardless of the type of claim made against the City.

Contractor and the officers, employees, agents, and subcontractors of Contractor are not agents of the City, as those terms are used in ORS 30.265.

Governing Laws

This Agreement shall be governed by the laws of the State of Oregon.

Compliance with Law

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

Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the services provided for in the Agreement and shall be responsible for such payment of all persons supplying such labor or material to any subcontractor.

Contractor shall not permit any lien or claim to be filed or prosecuted against the City or its property on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien or claim so filed or prosecuted.

Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617.

If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a subcontractor by any person in connection with the Agreement as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the Agreement. The payment of a claim in the manner authorized hereby shall not relieve the Contractor from his/her or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the city may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.

If the Contractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Agreement within 30 days after receiving payment from the City, the Contractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

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 employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the 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.

No person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases the employee shall be paid at least time and a half pay:

Either:

1. For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday: or
2. For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Contractor shall pay employees for overtime work performed under the Agreement in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq.).

The Contractor must give notice to employees who work on this Agreement in writing, either at the time of hire or before commencement of work on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.

All subject employers working under the Contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126.

All sums due the State Unemployment Compensation Fund from the Contractor or any subcontractor in connection with the performance of the Agreement shall be promptly so paid.

Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.

Contractor certifies that it has not and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055. Without limiting the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, (iv) ORS 659.425, (v) all regulations and administrative rules established pursuant to those laws; and (vi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600.

Contractor shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of City in connection with this Agreement in violation of ORS chapter 244.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender, age, national origin, physical or mental disability, or disabled veteran or veteran status in violation of state or federal law.

Any other condition or clause required by law to be in this Agreement shall be considered included by this reference.

Confidentiality

Contractor shall maintain the confidentiality, both external and internal, of that confidential information to which it is exposed by reason of this Agreement. Contractor warrants that its employees assigned to this Agreement shall maintain necessary confidentiality.

Public City

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.

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.

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 subcontracts for any part of the Services without the prior written consent of the City.

Mediation/Dispute Resolution

Should any dispute arise between the parties to this Agreement it is agreed that such dispute will be submitted to a mediator prior to any arbitration or litigation, and the parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and, only in the event said mediation efforts fail, through litigation or binding arbitration. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Benton County, Oregon, unless both parties agree in writing otherwise. If arbitration is selected by the parties, the parties shall exercise good faith efforts to select an arbitrator who shall be compensated equally by both parties. Venue for any arbitration shall be Benton County, Oregon. Venue for any litigation shall be the Circuit Court for Benton County.

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, expert fees and costs incurred therein at arbitration, trial and on appeal.

Records, Inspection and Audit by the City

Contractor shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least three years after City makes final payment on this Agreement and all other pending matters are closed.

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 documents shall be provided to the City free of charge.

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 three (3) years after City makes final payment on this Agreement and all other pending matters are closed.

This Section is not intended to limit the right of the City to make inspections or audits as provided by law or administrative rule.

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, 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 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 for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

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.

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.

Insurance

Consultant shall, at its own expense, always during the term of this agreement, maintain in force a comprehensive professional liability policy with minimum coverage of at least \$1,000,000 combined single limit. City shall be named as an additional insured. Certificates of Insurance shall be provided to the City upon request.

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

CITY:

CONTRACTOR:

Signature _____
Print _____
Title _____
Date _____

Signature _____
Print _____
Title _____
Date _____

ATTACHMENT A
Scope of Work & Compensation

Scope of Work

- Assist with accounting tasks and approval process for AP and Payroll Processing
- Complete Bank Reconciliations
 - Bank Recons will be reviewed and signed off by City Manager
- Complete half year financial reports for City Council
 - Scheduled for second council meeting in January (for Jul-Dec) and second council meeting in July (for Jan-Jun)
- Complete monthly budget reports to City Manager and Department Managers
 - Typically emailed out by the 10th of every month
- Complete yearly budget process
 - Create Financial Forecast for main funds (General Fund & Enterprise Funds)
 - Work with Department Managers on upcoming needs
 - Complete/update 5-year Capital Improvement Plan
 - Complete Proposed Budget for budget committee
 - Attend Budget Committee Meetings as necessary
 - Create Budget Presentation
 - Attend City Council adoption
- Assist with yearly audit
- Starting in July 2023 – Unless approved absence by City Manager and not needed, Matt Brown will hold office hours at Sweet Home City Hall on City Council Regular Meeting days starting at 1 PM and attend City Council meetings as necessary.

Compensation

\$125 per hour

Mileage billed at IRS Mileage **Rate**