

## 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

**1. 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.

**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.** Subject to the termination provisions of Section 10 of this Agreement, this Agreement shall commence once executed by both parties and shall terminate on 9/30/2022. The city reserves the exclusive right to extend the contract for a period of three (3) months. Such extensions shall be in writing with terms acceptable to both parties.

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

**5. Payment.**

**5.1** 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. Any travel or additional expense shall be pre-approved by the city prior to being incurred.

**5.2** Contractor shall make and keep reasonable records of work performed pursuant to this Agreement and shall provide detailed 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.

**5.3** The city may suspend or withhold payments if contractor fails to comply with any requirement of this agreement.

**5.4** 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.

**6. 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 execution of this agreement, contractor grants to city an irrevocable, nonexclusive license to use contractor's work products created through its services for the project. The license granted under this section permits city to authorize its contractors, subcontractors of any tier, consultants, subconsultants of any tier, and material or equipment suppliers, to reproduce applicable portions of the work products in performing services for the project. Any unauthorized use of contractor's work product for purposes unrelated to the project shall be at city's sole risk and without liability to contractor.

**7. Notices.** All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

**CITY:** City Manager  
3225 Main St.  
Sweet Home, OR 97386

**CONTRACTOR:** Matt Brown  
14682 NW Cosmos Street  
Portland OR 97229

When so addressed, such notices, bills and payments shall be deemed given upon deposit in the United States mail, postage-prepaid.

**8. Standard of Care.** Contractor shall comply with the applicable professional standard of care in the performance of the Services. Contractor shall prepare materials and deliverables in accordance with generally accepted standards of professional practice for the intended use of the project.

**9. Termination.**

**9.1 Termination for Cause.** City may terminate this Agreement effective upon delivery of written notice to Contractor under any of the following conditions:

**9.1.1** If 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 service. This Agreement may be modified to accommodate a reduction in funding.

**9.1.2** If Contractor becomes insolvent, if a voluntary or an involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

**9.1.3** If Contractor is in breach of this Agreement, and such breach is not remedied as contemplated by Section 9.2 of the Agreement.

## **9.2** Breach of Agreement

**9.2.1** Contractor shall remedy any breach of this Agreement within the shortest reasonable time after Contractor first has actual notice of the breach or City notifies Contractor of the breach, whichever is earlier. If Contractor fails to remedy a breach within three (3) working days of its actual notice or receipt of written notice from the City, City may terminate that part of the Agreement affected by the breach upon written notice to Contractor, may obtain substitute services in a reasonable manner, and may recover from Contractor the amount by which the price for those substitute services exceeds the price for the same services under this Agreement.

**9.2.2** If the breach is material and Contractor fails to remedy the breach within three (3) working days of receipt of written notice from the City, City may declare Contractor in default, terminate this Agreement and pursue any remedy available for a default.

**9.2.3** Pending a decision to terminate all or part of this Agreement, City unilaterally may order Contractor to suspend all or part of the services under this Agreement. If City terminates all or part of the Agreement pursuant to this Section 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, as a result of the suspension.

**9.2.4** 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.

**9.3** Termination for Convenience. City may terminate all or part of this Agreement at any time for its own convenience by providing three (3) days 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 Contractor's and sub consultants reasonable costs actually incurred in closing out the Agreement. In no instance shall Contractor be entitled to overhead or profit on work not performed.

**10. 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.

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

**12. 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.

**13. Indemnification.**

**13.1 Liability of Contractor for Claims Other Than Professional Liability.** 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.

**13.2 Liability of Contractor for Claims for Professional Liability.** 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.

**13.3** 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.

**14. Governing Laws.** This Agreement shall be governed by the laws of the State of Oregon.

**15. Compliance with Law.**

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

**15.2** 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.

**15.3** Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Agreement.

**15.4** 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.

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

**15.6** 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.

**15.7** 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.

**15.8** 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.

**15.9** 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:

**15.9.1** Either:

**15.9.1.1** 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

**15.9.1.2** 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

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

**15.9.3** 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.).

**15.10** 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.

**15.11** 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.

**15.12** 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.

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

**15.14** 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.

**15.15** 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.

**15.16** If Contractor is a foreign contractor as defined in ORS 279A.120, Contractor shall comply with that section and the City must satisfy itself that the requirements of ORS 279A.120 have been complied with by Contractor before City issues final payment under this agreement.

**15.17** If this Contract exceeds \$50,000, is not otherwise exempt, and includes work subject to prevailing wage, Contractor shall comply with ORS 279C.838, ORS 279C.840, and federal law.

**15.18** 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.

**15.19** Contractor shall ensure that any lawn and landscape maintenance, if applicable, shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.

**15.20** Contractor is a “subject employer,” as defined in ORS 656.005, and shall comply with ORS 656.017.

**15.21** 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 laws.

**15.22** Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.

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

**16. 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.

**17. 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.

**18. 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.

**19. 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.

## **20. Mediation/Dispute Resolution**

**20.1** 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 Sweet Home, 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 Sweet Home. Venue for any litigation shall be the Circuit Court for Sweet Home.

**21. 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.

## **22. Records, Inspection and Audit by the City.**

**22.1** 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.

**22.2** 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.

**22.3** 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.

**22.4** This Section 23 is not intended to limit the right of the City to make inspections or audits as provided by law or administrative rule.

**23. 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.

**24. 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.

**25. 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.

**26. Insurance.** Consultant shall, at its own expense, at all times during the term of this agreement, maintain in force:

**26.1** 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: \_\_\_\_\_

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

Print: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

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

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

**ATTACHMENT A**  
**Scope of Work & Compensation**

**Scope of Work**

Scope of work includes estimates of time to complete the requested tasks. If a task is taking longer than expected, I will reach out to the City Manager with a better estimate for completion and approval to complete task.

1. Review Financial Policies for City
  - Compare with GFOA best practices and recommend changes if necessary.
    - Estimate: 1-2 hours
  - Provide contact information for Short Term Investment Board for Oregon and sample investment policy to be reviewed, available if needed.
    - Estimate: Free to provide contact information
    - Estimate: 2 hours to accompany review of investment policy with City and 3<sup>rd</sup> party and make changes to document, if requested by client
2. Review Springbrook Software roles
  - Review current roles for all employees and make recommendations for updates using financial software best practices and internal control placement
    - Estimate: 1 hours
3. Review Job Descriptions in Finance Department Structure
  - Interview current staff on job duties
    - Estimate: 4 hours (1 hour per Finance employee)
  - Department analysis on staffing with comparable cities. Make recommendations for staffing levels and updated job duty definitions/descriptions.
    - Estimate: 2-3 hours
4. Review Financial Processes
  - Review Accounts Payable guidelines, procedures, and policies. Make recommendations as needed
    - Estimate: 1 hour
  - Review Positive Pay guidelines and banking policies for action. Make recommendations as needed
    - Estimate: 30 minutes
  - Review banking reconciliation process – opportunities to use Springbrook bank reconciliation process. Make recommendations as needed
    - Estimate: 1 hour
    - Estimate: 3 hours for transition to Springbrook Bank Reconciliation, if requested by client. Springbrook Support wait time, if required, billed at ½ time.
  - Review Bank Pool transition with Springbrook Software with Finance Director
    - Estimate: 30 min
    - Estimate: 3-4 hours for transition to Springbrook Pool Cash, if requested by client. Springbrook Support wait time, if required, billed at ½ time. Estimate depends on how involved/knowledgeable Finance Director is with account setups & Springbrook
  - Review Encumbrance Process with comparable municipalities and software capabilities
    - Estimate: 1-2 hours for review and recommendation

- Estimate: 1-2 hours on Springbrook implementation if requested by client
5. Assist with RFP for Auditing firm
- Provide 2 sample copies from other local municipalities
    - Estimate: Free
  - Provide assistance with RFP process, rating review, interview process if requested by client
    - Estimate: 2 hours
6. Assist as Interim Finance Director as requested/agreed upon with the City Manager and/or City Council

**Compensation**

- \$100 per hour
- Mileage/Hotel, if required/requested, at IRS Mileage Rate, reimbursed at cost of service