

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

Contractor	[Contractor]
Consideration	\$(AMOUNT)
Effective Date	[DATE]
Completion Date	[DATE]
Project/Services	[Description of Professional Services] – [Project]

This PROFESSIONAL SERVICES AGREEMENT (**Agreement**) is entered by the City of The Dalles, an Oregon municipal corporation (**City**) and [name], an [entity type—check Oregon Secretary of State website for the appropriate type] (**Contractor**), for Contractor's provision of [describe generally] services to support the City's [project].

WHEREAS, the City requires performance of certain professional services; and

WHEREAS, Contractor desires to perform those certain professional services pursuant to the compensation and conditions set forth herein.

NOW, THEREFORE, in consideration of both the provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is here acknowledged, the Parties agree:

A. Contractor's Duties

1. Scope of Work. Contractor agrees, at its expense, to furnish all labor, equipment, materials, expertise, tools, supplies, insurance, licenses, reference and background data and information, including subcontractors approved under this Agreement, and provide any equipment necessary to perform all tasks described in Contractor's [DATE] scope of work, attached to and made part of this Agreement as **Exhibit A (Work)**. The Parties agree the Work shall be interpreted broadly to the City's benefit: Contractor agrees to perform all subordinate tasks not explicitly referenced in **Exhibits A** but necessary to fully and effectively perform those specifically listed tasks.
2. Standard of Care. Contractor agrees the standard of care applicable to its provision of the Work will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar Work at the time of performance. Contractor agrees to re-perform any Work not meeting this standard without additional compensation.
3. Examination. Contractor agrees it examined the project site and the contract documents connected with the solicitation for this Work prior to its submittal of its proposal. The Parties agree Contractor's submission of a proposal for this Agreement's award is expressly considered prima facie evidence Contractor made such an examination and is satisfied as to the conditions to be encountered in its performance of the Work and as to the requirements of the contract documents. Contractor agrees to protect itself in the unit prices or the lump sum proposed on the Work. Contractor agrees its failure to visit or thoroughly familiarize itself with the labor, equipment, and material required, the difficulty of the conditions involved, or the scope of the project or the Work shall neither relieve Contractor of its obligation



EXHIBIT A

to complete the Work and perform under this Agreement for the price proposed nor entitle Contractor to a price adjustment.

4. Insurance and Indemnity.

- a. Insurance. Contractor agrees, at its expense, to carry and maintain in effect throughout the Contract Term statutory **Workers' Compensation** coverage, **Comprehensive General Liability** insurance in the amount of \$1,000,000 (per occurrence) and \$2,000,000 (in aggregate), **Professional Liability** insurance in the amount of \$2,000,000, and **Commercial Automobile Liability** insurance (including coverage for all owned, hired, and non-owned vehicles) with a combined single limit per occurrence of \$1,000,000.
- b. Certificates. Except for Professional Liability and Workers' Compensation insurance, Contractor agrees to provide the City with certificates of insurance naming the *City of The Dalles* as an additional insured prior to commencement of the Work performed under this Agreement and to further provide the City 30 days' notice before cancelling or reducing any insurance policy contemplated by this Agreement.
- c. Workers' Compensation. Contractor agrees it is solely responsible for maintaining proper and adequate Workers' Compensation coverage. If Contractor's insurance does not cover each and every subcontractor, certificates of insurance issued on policies covering each and every subcontractor shall be filed with the City prior to commencement of the Work, including any subcontract operations. Contractor shall provide the City with evidence it is either a *self-insured employer* or a *carrier-insured employer* for Workers' Compensation pursuant to ORS Chapter 656 prior to commencing any Work.
- d. Indemnity. Contractor agrees to indemnify, defend, and hold harmless the City (including its officers, agents, and employees) against all liability, loss, and costs arising from actions, suits, claims, or demands to the proportionate extent of the negligent acts or omissions of Contractor (including its officers, agents, and employees) in its performance of this Agreement. Further, in accordance with the Oregon Tort Claims Act and the Oregon Constitution, the City agrees to indemnify, defend, and hold harmless Contractor (including its officers, agents, and employees) against all liability, loss, and costs arising from actions, suits, claims, or demands to the proportionate extent of the negligent acts or omissions of the City (including its officers, agents, and employees) in its performance of this Agreement.

5. Payments.

- a. Prompt Payment. Contractor agrees to promptly pay as due all persons supplying labor or materials for the prosecution of services or Work arising from this Agreement: if Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor (including subcontractors), the City may pay such a claim and charge the amount of its payment against funds actually or expectedly due from Contractor. The Parties



EXHIBIT A

agree payment of any claim in this manner shall not relieve Contractor or its surety from any obligations with respect to any unpaid claims.

- b. Industrial Accident Fund. Contractor agrees to pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractors incurred in the performance of this Agreement.
- c. Labor Hours. Contractor agrees to pay all employees at least time and half pay for all overtime worked in excess of 40 hours in any one work week, except for excluded individuals pursuant to ORS 653.010 to 653.261 or 29 U.S.C. 201 to 209.
- d. Medical Care. Contractor agrees to promptly pay as due all persons, co-partnerships, associations, or corporations furnishing medical, surgical, hospital care, or other needed care and attention incident to sickness or injury to Contractor's employees, or all sums which Contractor agrees to pay for such services, and all moneys and sums which Contractor collected or deducted from the wages of its employees pursuant to any law or contract for the purpose of providing or paying for such service.
- e. No Liens. Contractor shall not permit any lien or claim to be filed or prosecuted against the City on account of any Work (including labor or materials) furnished under this Agreement.
- f. Employee Withholdings. Contractor agrees to pay to the Oregon Department of Revenue all sums withheld from its employees pursuant to ORS 316.167.

B. City's Duties

1. Compensation.

- a. Total. The City agrees to compensate Contractor for the Work in an amount not to exceed \$ [redacted] to be paid [method]. Contractor agrees its provision of a completed Form W-9 to the Agency is a condition precedent to the Agency's payment obligations under this Agreement.
- b. Progress Payments. The City agrees to make payment upon Contractor's completion of the Work and delivery of an invoice detailing the Work, subject to the City's approval and no more frequently than monthly. Payment shall be made in net 30 days only for Work actually completed as of the invoice date.
- c. Satisfaction. Contractor agrees the City's payment of an invoice releases the City from any further obligation to compensate Contractor for the Work (including expenses) incurred as of the invoice date. The Parties agree payment shall not be considered acceptance or approval of the Work or waiver of any defects therein.
- d. Public Budgeting. The City certifies sufficient funds are available and authorized for expenditure to finance the costs of this Agreement during the current fiscal



EXHIBIT A

year. The Parties agree appropriations for future fiscal years are subject to budget approval by the City Council.

C. Special Conditions

1. Acceptance. Contractor agrees to timely notice the City in writing when it believes it has completed the Work so the City can undertake a final inspection. The City agrees to inspect the Work (and all records generated by Contractor relating to the Work) within fifteen (15) days of its receipt of Contractor's completion notice. The City agrees to either accept the Work or notice Contractor of any defects or remaining performance necessary to fully complete the Work. The City agrees to provide Contractor its final acceptance of the Work once it determines all of the Work has been performed satisfactorily.

D. General Conditions

1. Time. The Parties agree time is of the essence to this Agreement's performance: Contractor's prosecution of the Work shall begin without undue delay on or after the Effective Date and shall be completed before or on the Completion Date; provided, however, the Parties agree to equitably adjust Contractor's performance schedule subject to excuses for performance associated with impossibility, impracticability, and unforeseeable factors or events beyond Contractor's control (such as acts of God).
2. Termination. This Agreement's term expires naturally upon the Parties' full performance or on the Completion Date (whichever first) unless sooner modified pursuant to this Agreement. The Parties agree the City may terminate this Agreement with seven (7) days' notice and Contractor may terminate this Agreement with thirty (30) days' notice, both without penalty. The City agrees to compensate Contractor for all approved services rendered prorated to the date the City notices its intent to terminate.
3. Tax Currency. Contractor agrees (and by executing this Agreement, certifies under penalty of perjury) it is, to the best of its knowledge, not in violation of any tax laws described in ORS 305.380.
4. Full Integration/Modification. This Agreement contains the Parties' entire understanding and intent and supersedes all prior negotiations, representations, or other written or oral agreements on this matter. The Parties agree this Agreement may only be modified by a written instrument duly executed by the Parties.
5. Independent Contractor. The Parties agree Contractor is an *independent contractor* as defined by ORS 670.600(2) and as interpreted by regulations promulgated by the Oregon Bureau of Labor and Industries. Neither the terms of this Agreement nor the course of its performance by the Parties shall be construed as implicating an employer-employee relationship. Contractor expressly warrants its exclusive agency free from City direction and control over the means and manner of completing the Work.



EXHIBIT A

6. Assignment/Delegation. The Parties agree no Party shall assign or transfer an interest or duty under this Agreement without the other Party's written consent and any attempted assignment or delegation without written consent shall be invalid.
7. Subcontractors. Contractor agrees to provide the City with a list of proposed subcontractors within ten (10) calendar days of this Agreement's mutual execution and before awarding any subcontract connected with the Work or this Agreement, and shall not retain any subcontractor the City reasonably objects to as incompetent or unfit. Contractor agrees it is as fully responsible to the City for its subcontractors' and employees' (whether directly or indirectly employed) negligent acts and omissions as it is for its employees' negligent acts and omissions. The Parties agree nothing in this Agreement is intended to or shall create any contractual privity between the City and any subcontractor.
8. Enforceability. The Parties agree all disputes connected with this Agreement or its performance shall be heard in the Circuit Court of the State of Oregon for the County of Wasco and any resolutions shall be construed under the laws of the State of Oregon. If any provision of this Agreement is held invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties.
9. Waiver. The Parties agree a Party's failure to insist upon strict adherence to a provision of this Agreement on any occasion shall not be considered a waiver of the Party's rights or deprive the Party of the right to thereafter insist upon strict adherence to the provision or any other provision of this Agreement.

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EXHIBIT A

10. Notices. All notices required or permitted to be given under this Agreement shall be deemed given and received two (2) days after deposit in the United States Mail, certified or registered form, postage prepaid, return receipt requested, and addressed:

To the City: City Manager
City of The Dalles
313 Court Street
The Dalles, OR 97058

To Contractor:

IN WITNESS WHEREOF, the Parties duly execute this **PROFESSIONAL SERVICES AGREEMENT** this ____ day of _____, 2024.

CITY OF THE DALLES

CONTRACTOR

Matthew B. Klebes, City Manager

[Name], [Title]

ATTEST:

Amie Ell, City Clerk

Approved as to form:

Jonathan M. Kara, City Attorney

