

**STANDARD TERMS AND CONDITIONS
FOR AGREEMENT TO FURNISH
AUDIT SERVICES
TO THE CITY OF NEWPORT, OREGON**

ARTICLE I: SCOPE

For consideration set forth in Article V, Merina & Co, a professional firm, hereinafter referred to as CONTRACTOR, agrees to provide services to the City of Newport, Oregon, a municipal corporation, hereinafter referred to as the CITY. This Agreement incorporates all the promises, representations, and obligations set forth in this Agreement and the Request for Proposal, Proposal Response, Fee Schedule, and other supporting documents and attachments.

The contract term shall be for a period of approximately three years, commencing April 2020, with an option to extend the contract an additional two, one-year terms, at the option of the City. If the City elects to renew the contract, a written notice shall be provided a minimum of thirty (30) days prior to the expiration of the current contract of its intent to do so.

ARTICLE II: RESPONSIBILITY OF CONTRACTOR

- A. Notice to Proceed. CONTRACTOR will not begin work on any of the duties and services listed in Article I until execution of the contract. Authorization to proceed on additional services not defined in Article I shall be in the form of an amendment as defined in Article II.
- B. Level of Competence. CONTRACTOR is employed to render professional services and shall be responsible, to the level of competence presently maintained by other practicing professional CPA firms in good standing and engaged in the same type of professional personal services, for the professional and technical adequacy and accuracy of designs, drawings, specifications, documents, and other work products furnished under this Agreement.
- C. Lead Contractor. Tonya Moffitt shall serve as the Lead Contractor for Audit Services described under the terms of this Agreement. Any change in the designation of this role must be approved by the City.
- D. Documents Produced. CONTRACTOR agrees that all work products produced by CONTRACTOR in the fulfillment of its obligations under this Agreement, and all information, documents and material, gathered or compiled in meeting those obligations, shall be considered property of the CITY, and shall be provided to the CITY upon completion of this Agreement or termination of the Agreement pursuant to Article XII.
- E. State or Federal Requirements. CONTRACTOR covenants and agrees to comply with all of the obligations and conditions applicable to public contracts of this type pursuant to ORS Chapter 279 A, and B, as though each obligation or condition were fully set forth herein. In addition, CONTRACTOR covenants and agrees that in the performance of its duties hereunder, it will comply with all other state and federal requirements applicable to contracts of this type. If any provision of this Agreement shall be deemed to be not in compliance with any statute or role of law, such provision shall be deemed modified to ensure compliance with said statute or role of law.
- F. Oregon Workers' Compensation Law. CONTRACTOR, its subcontractors, if any, and all employers working under this Agreement 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.

- G. Record Retention and Review. The CONTRACTOR shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct costs of any nature expended in the performance of this Agreement. These records shall be subject during regular business hours of the CONTRACTOR to inspection, review, or audit by personnel duly authorized by the City upon reasonable advance written notice from the City to the CONTRACTOR. The CONTRACTOR will retain all records related to this Agreement for seven (7) years following the date of final payment or completion of any required audit, whichever is earlier, and make them available for inspection by persons authorized under this provision. The CONTRACTOR shall be responsible for any audit exceptions or disallowed costs incurred by the CONTRACTOR or any of its SUBCONTRACTORS.
- H. Oregon Identity Theft Protection Act. CONTRACTOR, and its SUBCONTRACTORS to comply with the Oregon Identity Theft Protection Act (OITPA), ORS Sections 646A.600 through 646A.628.
- I. Taxpayer Identification Number. CONTRACTOR agrees to complete a Request for Taxpayer Identification Number and Certification (W-9 Form) as a condition of the CITY'S obligation to make payment. If the CONTRACTOR fails to complete and return the W-9 Form to the CITY, payment to CONTRACTOR may be delayed, or the CITY may, in its discretion, terminate the Contract.

ARTICLE III: RESPONSIBILITY OF CITY

- A. Authorization to Proceed. CITY shall authorize CONTRACTOR upon execution of the contract to start work on any of the services listed in Article I.
- B. Access to Records, Facilities and Property. CITY shall comply with reasonable requests from CONTRACTOR for inspection or access to CITY's records, facilities, and properties by providing any and all information within its possession or control that may be reasonably helpful in the performance of the services provided herein.
- C. Timely Review. CITY shall examine all studies, reports, specifications, proposals, and other documents presented by CONTRACTOR, obtain advice of an attorney, insurance counselor, accountant, auditor, and other contractors as CITY deems appropriate for such examination and render in writing decisions pertaining thereto in a timely manner so as not to unreasonably delay the services of CONTRACTOR.

ARTICLE IV: MODIFICATIONS

CITY or CONTRACTOR shall not make modifications in the attached Agreement or these Standard Terms and Conditions except in writing as an amendment to the agreement. Said modifications shall be agreed to by both parties, with scope of work, schedule, and compensation to be negotiated at the time the modification is proposed by either party. Modifications that do not meet these requirements shall not be binding, and no further compensation will be allowed for any work performed.

ARTICLE V: COMPENSATION

City agrees to pay for the goods and services procured in Article I in accordance with the compensation provisions described in this Agreement and the Fee Schedule.

The City shall remit payment within thirty (30) days of receipt of a monthly billing from the CONTRACTOR. Such billing shall be only for services provided to that point. If payment is not made within 30 days, interest on the unpaid balance will accrue beginning on the 31st day at the rate of one percent (1%) per month or the maximum interest rate permitted by law, whichever is less.

Such interest is due and payable when the overdue payment is made, unless delay in payment is due to a contested billing. CITY has the right to appeal or ask for clarification on any CONTRACTOR billing within 30 days of receipt of billing. Until said appeal is resolved or clarification is accepted, no interest will accrue on that portion of the billing. In the event of a contested billing, only that portion so contested shall be withheld, and the undisputed portion shall be paid in accordance with this Article V.

Notwithstanding anything in this Agreement to the contrary, the CITY'S obligation to pay money beyond the current fiscal year shall be subject to and dependent upon appropriations being made from time to time by the City Council for such purpose; provided, however, that the City Manager or other officer charged with the responsibility for preparing the City's annual budget shall include in the budget for each fiscal year the amount of the city financial obligation payable in such year and the City Manager or such other officer shall use his/her best efforts to obtain the annual appropriations required to authorize said payments.

ARTICLE VI: INDEMNIFICATION

The CONTRACTOR agrees to indemnify, defend, and hold harmless the CITY, its agents, officers and employees, from and against any and all liability, claims, suits, loss, damages, costs, and expenses arising out of or resulting from the negligent or intentional acts, errors, or omissions of the CONTRACTOR, its officers, employees, or agents.

ARTICLE VII: INSURANCE

Before the Agreement is executed and work begins, the CONTRACTOR shall furnish the CITY a Certificate of Insurance for the coverage and limits set out below which is to be in force and applicable to the project for the duration of the contract. The issuing insurance companies must have a minimum current A.M. Best rating of A- VII or approved by the City. The Certificate must state that any insurance coverage shown cannot be suspended, voided, canceled by either party, or reduced in coverage or limits without 30 days prior written notice has been given to the CITY.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Commercial General Liability: Insurance Services Office (ISO) form CG 0001 with an edition date of 10-2001 or later, providing Commercial General Liability – Occurrence Form. With CG 25 03 (Amendment Aggregate Limits of Insurance per Project) or equivalent attached.
2. Automobile Liability: Insurance Services Office (ISO) form CA 0001, providing Business Automobile Coverage on owned, non-owned and hired vehicles.
3. Workers' Compensation insurance as required by Oregon Revised Statutes and including Employers Liability Insurance.
4. Professional Liability insurance on an occurrence or claims made basis with 24 month tail coverage.

B. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

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| 1. Commercial General Liability: | \$1,000,000 Each Occurrence |
| | \$1,000,000 Personal Injury |
| | \$1,000,000 General Aggregate |
| | \$1,000,000 Products/Completed Operations Aggregate |

The General Aggregate and Products/Completed Operations Aggregate shall apply separately to this project.

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| 2. Automobile Liability: | \$500,000 Per Occurrence |
| 3. Employers Liability: | \$ 500,000 Each Accident |
| | \$ 500,000 Disease Aggregate |
| | \$ 500,000 Disease Each Employee |
| 4. Professional Liability Insurance | \$3,000,000 Per incident / Claim |
| | \$3,000,000 Annual Aggregate |

C. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductible or self-insured retention as respects the CITY, its officers, employees and agents; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Clause - The Commercial General Liability insurance coverage required for performance of this contract shall be endorsed to name CITY OF NEWPORT and its officers, agents and employees as Additional Insured on any insurance policies required herein with respect to CONTRACTOR'S or any sub-contractor's activities being performed under the Agreement. The Certificate of Insurance must include a copy of the Additional Insured endorsement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
2. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, employees, or agents.
3. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive by endorsement, all rights of subrogation against the City of Newport, its officers, employees, and agents for losses arising from work performed by the CONTRACTOR for the CITY.

ARTICLE VIII: ASSIGNMENT

This Agreement is to be binding upon the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. No assignment of this Agreement shall be effective until the assignee assumes in writing the obligations of the assigning party and delivers such written assumption to the other original party to this Agreement.

Use of SUBCONTRACTORS by the CONTRACTOR or subsidiary or affiliate Firms of the CONTRACTOR for technical or professional services shall not be considered an assignment of a portion of this Agreement, and the CONTRACTOR shall remain fully responsible for the work performed, whether such performance is by the CONTRACTOR or SUBCONTRACTORS. No SUBCONTRACTORS shall be used without the written approval of the CITY.

Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CITY and CONTRACTOR.

ARTICLE IX: INTEGRATION

These terms and conditions and the attachments represent the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The agreement may not be modified or altered except in writing as specified in Article IV.

ARTICLE X: SUSPENSION OF WORK

The CITY may suspend, in writing, and without cause, all or a portion of the work under this Agreement. The CONTRACTOR may request that the work be suspended by notifying the CITY, in writing, of circumstances that are interfering with the progress of work. The CONTRACTOR may suspend work on the project in the event the CITY does not pay invoices when due. The time for completion of the work shall be extended by the number of days work is suspended. In the event that the period of suspension exceeds 90 days, the terms of the Agreement are subject to renegotiation and both parties are granted the option to terminate work on the suspended portion of the project, in accordance with Article XI.

ARTICLE XI: TERMINATION OF WORK

CITY may terminate all or a portion of the work covered by this Agreement for its convenience. CONTRACTOR may terminate this Agreement for its convenience upon first providing City with 270 days prior written notice. Either party may terminate work if the other party fails to substantially perform in accordance with the provisions of the Agreement. Termination of the Agreement is accomplished by written notice from the party initiating termination no less than fifteen (15) days in advance of the effective date of termination. Such notice of termination shall be delivered by certified mail with a receipt for delivery returned to the sender.

In the event of termination, CONTRACTOR shall perform such additional work as is necessary for the orderly filing of documents and closing of the project. The time spent on such additional work shall not exceed 10 percent (10%) of the time expended on the terminated portion of the project prior to the effective date of termination. CONTRACTOR shall be compensated for work actually performed prior to the date of termination plus work required for filing and closing as described in this Article. Upon termination, CONTRACTOR shall provide to the CITY all work products, material, documents, etc., gathered or compiled, related to the project, whether in CONTRACTOR'S possession at the time of termination or received later.

If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement.

ARTICLE XII: FORCE MAJEURE

Neither the CITY nor the CONTRACTOR shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

ARTICLE XIII: DISPUTE COSTS

In the event either party brings action to enforce the terms of this Agreement or to seek damages for its breach, or arising out of any dispute concerning the terms and conditions hereby created, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs, and expenses, incurred therein, including such costs and fees as may be required on appeal.

ARTICLE XIV: CONFLICT AND SEVERABILITY

In the event of any inconsistency between the terms of this Agreement and the terms listed in any additional attachments to this Agreement, the terms of this Agreement shall control. Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

ARTICLE XV: NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

During the term of this Agreement, the CONTRACTOR agrees as follows:

The CONTRACTOR will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

ARTICLE XVI: COURT OF JURISDICTION

The laws of the state of Oregon shall govern the validity of this Agreement, its interpretation and performance, and other claims related to it. Venue for litigation shall be in Lincoln County, Oregon.

CONTRACTOR:

Date: April 16, 2020

By: 
CONTRACTOR

By: Tonya Moffitt

Title: Managing Partner

Mailing Address: 7624 SW Mohawk Street
Tualatin, OR 97062

Telephone: 503-723-0300

Fax: NA

32-0346664

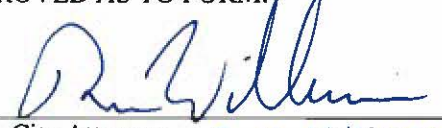
Corp. Tax No./Social Security No.

CITY OF NEWPORT, OREGON:

Date: April 24, 2020

By: 
City Manager

APPROVED AS TO FORM:

By:  6/5/2020
City Attorney Russ Williamson