**City of Beaverton**

Personal Services Contract #25-4248

To Provide Personal Services Relating to:

**Beaverton Operating Levy Strategic Positioning - Baldwin Consulting, LLC**

# 1. Introduction

**THIS CONTRACT FOR PERSONAL SERVICES** (“Contract”) is between the City of Beaverton, Oregon, located at 12725 SW Millikan Way, P.O. Box 4755, Beaverton, Oregon, 97076 (“City”) and Baldwin Consulting, LLC, located at 435 El Paraiso Rd NW, Los Ranchos De Albuquerque, NM, 87107 (“Contractor”), collectively known as the “Parties” and each individually as a “Party.” City's primary supervisor for this Contract (“Contract Administrator”) is Jessie Hall, Program Specialist.

**The Parties agree as follows:**

# 2. Effective Date

## 2.1. Terms

The Contract shall become effective on the date last signed by a Party and approved by City’s legal counsel. Unless terminated or extended, the Contract expires when City accepts Contractor’s completed performance or on June 30, 2026, whichever date occurs first (“Term”).

# 3. Statement of Work

## 3.1. Contractor shall perform the services as scheduled (“Work”) in accordance with the terms and conditions of the Contract, and as set forth below:

Strategic Positioning Scope of Work:

* *Gain a clear understanding of the need and scope of a five-year operating levy*—working with the City Manager and Mayor, review recent Council and Budget Committee discussions of the need for and interest in a five-year operating levy; analyze the programs and services that can be funded with an operating levy and the amount of levy needed to support those programs and services.
* *Identify the research firm best suited to polling for the operating levy*—evaluate research firms that have done work in Oregon and identify firm for the City to work with on electoral research for an operating levy, based on successful messaging, timing analysis and positive reputation.
* *Work with research firm to develop polling instrument/focus groups to understand the receptiveness of Beaverton voters to an operating levy, the most compelling messaging and the optimal timing*—provide information and guidance to selected research firm to develop the polling instrument and determine the use of focus groups or other research methods, bringing in Mayor and City Manager to ensure effectiveness and accuracy of research.
* *Work with Mayor’s staff to set up and engage in meetings with Mayor, City Manager (as needed) and key local government stakeholders (THPRD, TVF&R, BSD, Washington County, Metro to understand their potential money ballot measures and educate them on Beaverton’s operating levy ballot measure*—advise on whether this is a two-part process done before and after polling, as information provided may significantly impact the design of the research instruments and the response to them. This step is key to avoiding overcrowded ballots where the likelihood of success is lowered for everyone.
* *Develop briefing information for City Council members, and help facilitate (if desired) discussion during the Council’s strategic planning/goal setting retreat in October*—as an operating levy will have significant revenue impacts for the City, it’s imperative that the City Council be educated on the importance of a successful levy measure, strongly support referring an operating levy to the ballot, and be effective ambassadors for the levy.

Any further refinement of the scope of work will be executed through a written amendment as described in Section 13.

# 4. Contract Documents

## 4.1. Order of Precedence

In the event of a conflict between or among the terms of this instrument, any proposal, or request for proposal, the following order of precedence shall prevail: (a) this instrument, (b) the request for proposal, and (c) the proposal. Nothing in the Contract shall be considered an acceptance of the terms of a proposal if the terms of the proposal conflict or are otherwise incompatible with the express terms in the Contract or in City’s request for proposal.

# 5. Payment

City shall pay Contractor the sum of $15,000.00 for satisfactory accomplishment of the Work required by the Contract. The **MAXIMUM, NOT-TO-EXCEED AMOUNT** of compensation payable to Contractor under the Contract, which includes any allowable expenses or reimbursement, is $15,000.00.

# 6. Billing and Payment Schedule

1. At least thirty days prior to the due date of payment, Contractor shall prepare and submit an invoice of services rendered to:  
   **the City of Beaverton, Attention: Jessie Hall, Mayor's Office, P.O. Box 4755, Beaverton, Oregon 97076**.
2. City shall pay Contractor after the Contract Administrator approves and accepts Contractor’s completed Work. Contract Administrator shall subsequently submit a payment request to City’s Finance Department for processing.
3. If the Contract specifies an end product, City may withhold an amount up to 10 percent of the total sum of money to be paid until all required Work is completed and accepted.
4. If charges are made for services performed and those charges are to be paid from grant funds, the services shall relate directly to the grant from which the funds are expended.
5. City may pay Contractor interim payments for partial completion of tasks or services only if City provides prior written authorization. An interim payment shall release City from any further obligation for payment to Contractor for Work performed or expenses incurred as of the date of the invoice of services rendered.

# 7. Representations and Warranties

Contractor represents and warrants to City that:

1. If Contractor is an entity, Contractor is duly organized, validly existing, and in good standing under the laws of the State it is incorporated and is duly qualified and authorized to do business and is in good standing in all States where it is required to be qualified and authorized.
2. Contractor has the legal power and authority to:
   1. Transact the business in which Contractor is engaged and presently proposes to engage; and
   2. Execute, deliver, and perform the Contract.
3. Contractor has taken all necessary action to authorize the execution, delivery, and performance of the Contract.
4. Contractor has duly executed and delivered the Contract.
5. The execution, delivery, and performance of the Contract do not:
   1. Contravene any applicable provision of any law, statute, rule, or regulation, or any order, writ, injunction, or decree of any court or governmental entity,
   2. Conflict with or result in any breach of any agreement to which Contractor is a party, or
   3. Violate any provision of any organizational documents of Contractor, if Contractor is any entity.
6. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery, and performance by Contractor of the Contract, other than those that have already been obtained.
7. When executed and delivered, the Contract shall constitute the legal, valid, and binding obligation of Contractor, enforceable in accordance with its terms, except to the extent that the enforceability may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors’ rights generally.
8. The person who signs the Contract on behalf of Contractor:
   1. Is duly authorized to execute the Contract,
   2. Has authority and knowledge regarding Contractor’s payment of taxes, and
   3. To the best of the person’s knowledge, Contractor is not in violation of any Oregon tax laws.
9. Contractor has complied with all state and local tax laws, including but not limited to ORS 305.620, and ORS 316, 317, and 318.
10. Contractor is not subject to backup withholding because Contractor is exempt from backup withholding, Contractor has not been notified by the Internal Revenue Service (IRS) that Contractor is subject to backup withholding, or the IRS has notified Contractor that Contractor is no longer subject to backup withholding.
11. Contractor shall, at all times during the Term of the Contract, be duly licensed to perform the Work. If there is no licensing requirement for Contractor’s profession or for the Work to be performed, then Contractor shall be duly qualified and competent.
12. If Contractor performs personal services under the Contract, Contractor shall perform the Work in a good and workmanlike manner.
13. If Contractor provides professional services under the Contract, Contractor shall perform the Work in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill, and diligence ordinarily exercised by members of the profession currently practicing under similar conditions.
14. The warranties as to the standard of care set forth in subsection (L) and (M) are in addition to, and not in lieu of, any other warranties provided.

# 8. Subcontractors

## 8.1. Subcontractor Usage

Contractor shall use the subcontractors identified in its proposals. Contractor shall not change subcontractor assignments without the prior written consent of City’s Purchasing Manager.

## 8.2. COBID CERTIFIED Subcontractors

City shall enforce all firms certified by the State of Oregon Certification Office for Business Inclusion and Diversity, collectively known as COBID certified, subcontracting commitments submitted by Contractor in its proposals.

If Contractor subcontracts with a firm certified by COBID, in whole or in part, because of the subcontractor’s status as COBID certified, then Contractor shall require in its subcontract that the subcontractor remain certified throughout the Term of the Contract.

Contractor shall terminate the subcontract if the COBID certified subcontractor fails to remain certified throughout the Term of the Contract. Contractor shall then replace the terminated subcontractor with another state-certified subcontractor after receiving prior written consent from City’s Purchasing Manager.

## 8.3. Subcontractor Payment Reporting Required

Contractor shall submit a Monthly Subcontractor Payment and Utilization Report (“MUR”), made part of the Contract by reference. The MUR shall report all subcontractors employed in the performance of this Contract. An electronic copy of the MUR may be obtained by contacting the Purchasing Manager or at [www.BeavertonOregon.gov/Purchasing](http://www.BeavertonOregon.gov/Purchasing).

## 8.4. Key Personnel

If Work is awarded to an individual or a team, the key personnel identified in the proposal shall perform Work on the Contract in the role and at the level of involvement identified in the proposal.  Key personnel for this Contract are: Gwenn Baldwin. Contractor shall not substitute a key personnel member on a particular project without the prior written consent of City, which shall not be unreasonably withheld.

# 9. Availability of Funds

1. City has sufficient funds currently available and authorized for expenditure to finance costs of the Contract within City’s current fiscal period. However, City may terminate the Contract without further liability if (i) sufficient funds are not provided in future City Council-approved budgets of City or from applicable federal, state, or other sources to permit City in the exercise of its reasonable administrative discretion to continue the Contract, or (ii) City abolishes the program for which benefit this Contract was executed.
2. City shall provide Contractor with thirty days’ written notice if City terminates the Contract under this section. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.

# 10. Termination

## 10.1. For Convenience

1. **Mutual Consent**. The Parties may terminate the Contract at any time by mutual written consent.
2. **City.** City may, at its sole discretion, terminate the Contract, in whole or in part, upon thirty days’ written notice to Contractor.

## 10.2. For Cause by City

City may terminate the Contract, in whole or in part, immediately upon notice to Contractor, or at a later date as City may establish in its notice to Contractor, upon occurrence of any of the following events:

1. City fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to pay Contractor for the Work, as further described in section 9 (Availability of Funds).
2. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that the Work under the Contract is prohibited, or City is prohibited from paying for the Work from the planned funding source.
3. Contractor no longer holds a license or certificate that is required to perform the Work.
4. Contractor materially breached a covenant.
5. Any representation or warranty made by Contractor in Section 7 (Representations and Warranties) is false or misleading in any material respect when made or when deemed made or repeated if the breach is not cured within thirty days after receipt of written notice from City.
6. The insolvency, liquidation, or bankruptcy of a Party.
7. The death, physical incapacity, or inability of any of Contractor’s key personnel to perform the Work as provided under Section 8 (Subcontractors) Key Personnel Subsection.
8. As used in this subsection(D), “materially breached a covenant” means a:
   1. failure to perform the Work under the Contract within the time specified in the Contract or within the timeframe of any extension agreed to by City;
   2. failure to pursue the Work so as to endanger Contractor’s performance under the Contract in accordance with its terms, and the failure is not cured within ten business days after the date City delivers the notice, or within a longer period City may specify in the notice;
   3. failure to provide or maintain in full force and effect any required insurance, if that failure is not cured within seven days after receipt of written notice from City;
   4. failure to perform any other material covenant or obligation set forth in this Contract if that failure is not cured within thirty days after receipt of written notice from City.

## 10.3. For Cause by Contractor

Contractor may terminate the Contract if Contractor provides thirty days’ written notice to City that City failed to pay Contractor pursuant to the terms of the Contract and City failed to cure within thirty business days after receiving Contractor’s notice, or within a longer period of cure as Contractor may specify in its notice to City.

## 10.4. Remedies

1. In the event of termination pursuant to Section 10.1(A), 10.1(B), 10.2(B), 10.2(G), or 10.3 of the Contract, Contractor’s sole remedy shall be a claim for the total sum provided in Section 5 multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim which City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to City upon demand.
2. In the event of termination pursuant to Section 10.2(C), 10.2(D), 10.2(E), 10.2(F), or 10.2(H), City shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor is not in default under Section 10.2(C), 10.2(D), 10.2(E), 10.2(F), or 10.2(H), then the rights and obligations of the Parties shall be the same as if the Contract were terminated pursuant to Section 10.2(B) of the Contract.

## 10.5. Contractor’s Tender upon Termination

If Contractor receives a notice of termination of the Contract, Contractor shall immediately cease all Work unless City expressly directs otherwise in its notice of termination. Upon termination, Contractor shall deliver to City all documents, information, works-in-progress, and other physical property that are or would be deliverables had the Contract been completed. Upon City's request, Contractor shall promptly surrender all documents, research, objects, or other tangible things needed to complete the Work to a designated City representative. If Contractor created or had access to accounts, email addresses, or other intangible property pursuant to the Contract, Contractor shall transfer ownership of the intangible property to the City within 10 business days of termination.

# 11. Force Majeure

## 11.1. Force Majeure Event

Neither Party shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods, earthquakes, fires, acts of nature, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priorities, severe weather, or any other uncontrollable or unforeseeable act or circumstance beyond a Party’s reasonable control and without fault or negligence of the Party (“Force Majeure Event”).

## 11.2. Reasonable Efforts to Remove or Eliminate Force Majeure Event

A Party affected by the Force Majeure Event shall make all reasonable efforts to remove or eliminate the cause of the Force Majeure Event and shall diligently pursue performance of its obligations under the Contract after the Force Majeure Event ceases.

## 11.3. Written Notice; Effect of Delay

If there is a delay as a result of a Force Majeure Event, the Party delayed shall give written notice of the delay and the reason of the delay to the non-delayed Party within thirty days after the Party delayed learns of the Force Majeure Event. The Party delayed may request an extension of time up to the length of time of the delay due to a Force Majeure Event. Contractor shall not be entitled to additional compensation for delays that occur under this subsection.

# 12. Access to Records

1. Contractor shall maintain all books, documents, papers, and records relating to the Contract in accordance with generally accepted accounting principles.
2. Contractor shall maintain any other records pertinent to the Contract in a manner that clearly documents Contractor’s performance.
3. City, state, and federal governments, and their duly authorized representatives, shall have access to Contractor’s books, documents, papers, plans, writings, and records directly pertinent to the Contract to perform examinations, audits, and make excerpts and transcripts.
4. Contractor shall retain and keep accessible all fiscal records, books, documents, papers, plans, and writings related to the Contract, for the later of (i) a minimum of three years from the date the Contract expires; (ii) the minimum period required by applicable law, following final payment and termination of the Contract; or (iii) the conclusion of any audit, controversy, or litigation arising out of or relating to the Contract.

# 13. Amendment

## 13.1. Amendment to be in Writing; Definition

The Parties may not amend the Contract unless the amendment is first reduced to writing and signed by the Parties. An “amendment” is a written document, contemporaneously executed by City and Contractor, which increases or decreases the cost to City, or changes or modifies the Statement of Services or Delivery Schedule. Any amendment is effective only in the specific instance and for the specific purpose identified in the amendment.

## 13.2. Request for Amendment

In the event Contractor receives any communication whatsoever from City that Contractor contends gives rise to an amendment of the Contract, Contractor shall, within fifteen days after receipt, make a written request for an amendment to City. If Contractor fails to submit its written request for an amendment within fifteen calendar days, City may refuse to treat the communication as an amendment.

## 13.3. Documentation of Costs; Exclusion

Contractor shall submit a complete breakdown of labor, material, equipment, and other costs together with any request for an amendment to the Contract that affects the price. If Contractor incurs additional costs or devotes additional time on project tasks that were reasonably expected to be a part of the Contract or any mutually-approved amendments, then City shall only be responsible for payment of the costs it has agreed to pay.

# 14. Compliance with Laws

## 14.1. Applicable Laws

Contractor shall comply with all federal, state, and local laws, ordinances, rules, regulations, and executive orders applicable to the Work to be performed under the Contract. Contractor’s failure or neglect to comply with all applicable laws, ordinances, rules, or regulations shall not relieve Contractor of these obligations or the requirements of the Contract.

## 14.2. Tax Laws

During the Term of the Contract, Contractor shall comply with all state and local tax laws, including, but not limited to, ORS 305.620 and ORS chapters 316, 317, and 318.

## 14.3. Anti-Discrimination Laws

Contractor shall comply with all federal, state, and local civil rights and rehabilitation laws prohibiting discrimination based on race, color, sex, national origin, English proficiency, religion, age, disability, income, sexual orientation, or gender identity.

## 14.4. Specific Public Contracting Laws

Contractor shall comply with all applicable provisions of ORS 279A, 279B, and 279C relating to public contracts.  ORS 279B.220; ORS 279B.225, when applicable; ORS 279B.230; and ORS 279B.235 are incorporated into the Contract by this reference and made binding on City and Contractor.

## 14.5. Oregon Consumer Identity Theft Protection Act

Contractor shall safeguard consumer personal information pursuant to ORS 646.600 to 646A.628, the Oregon Consumer Identity Theft Protection Act.

## 14.6. Laws or Regulations of Federal or State Grants

The Parties shall comply with any state or federal law or regulation specific to any funding source that supports this Contract.

## 14.7. City Business License

1. Contractor shall obtain a City of Beaverton business license as required by Beaverton Code (BC) Chapter 7.01 before beginning the Work under the Contract.
2. Contractor shall provide the business license number in the space provided on the signature page of the Contract.
3. Contractor shall pay all fees due under BC Chapter 7.01 during the Term of the Contract.
4. City may withhold payments due under the Contract to satisfy the amount due for a business license.

# 15. Independent Contractor

## 15.1. Independent Contractor

Contractor is engaged as an Independent Contractor and has no authority to bind City. Contractor is not an officer, employee, or agent of City as those terms are used in the Oregon Tort Claims Act, ORS 30.260 to 30.300, or for any purpose.

## 15.2. Solely Responsible for Acts

Contractor shall be solely responsible for its acts and for the acts of its agents or employees during the performance of the Contract.

## 15.3. No Benefits

Neither Contractor nor any of Contractor’s agents or employees is entitled to any of the benefits that City provides its employees. As used in this subsection, “benefits” includes, but is not limited to, social security, workers’ compensation, and unemployment insurance benefits.

## 15.4. Responsibility for Federal or State Taxes

Contractor shall be responsible for all federal or state taxes applicable to compensation or payments made to Contractor under the Contract. Unless Contractor is subject to backup withholding, City will not withhold any amount of compensation or payment to cover Contractor’s federal or state tax obligations.

# 16. Ownership of Work Product

## 16.1. Independent Contractor; Work Made for Hire

Any materials created specifically through this Contract will be the property of the City. Contractor is an independent contractor for purposes of determining whether Contractor’s work product is “work made for hire” under the US Copyright Act, 17 U.S.C. §§ 101-810. If Contractor’s Work meets the definition of a work made for hire by an independent contractor, then the Work shall be considered a work made for hire and City shall be deemed the Work’s author. If Contractor’s Work does not meet the definition of work made for hire by an independent contractor, then Contractor irrevocably assigns and transfers to City all right, title, and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or other state or federal intellectual property law or doctrine.

## 16.2. Waiver and Release; Usage

1. Waiver and Release. Contractor waives and releases all rights relating to the use of the Work completed pursuant to Section 3 (Statement of Work) of this Contract, including any rights arising under 17 U.S.C. § 106A. Reuse of work product by City or others for purposes outside the scope of the Contract shall be without liability to Contractor.
2. Usage. If Contractor is an architect providing professional architectural services, then any plans, drawings, and other work product produced within the scope of the Contract are the property of Contractor. By executing the Contract, Contractor grants City an exclusive and irrevocable license to use that work product.

# 17. Indemnity

1. With regard to Contractor’s performance in connection with or incidental to the Work, but excluding its performance of professional services and the indemnification and hold harmless aspects set forth in subsection (B) of this section, Contractor releases and shall indemnify, defend, and hold harmless City, City’s officials, employees, agents, and volunteers from and against any and all claims, costs, damages, lawsuits, penalties, liens, losses and/or liabilities of any kind or nature, including all expenses of investigating and defending against same, including reasonable attorneys’ fees and costs at trial and on appeal, that arise from or are connected to or are directly or indirectly caused or claimed to be caused in whole or in part by the fault or negligent, reckless, or willful acts or omissions of Contractor or Contractor’s agents, employees, or subcontractors in performing Work required by the Contract. However, Contractor’s duty to release, indemnify, and hold harmless as required by this subsection shall not include any liability arising from the established sole negligence or willful misconduct of City, City’s officials, employees, agents, or volunteers.
2. With regard to Contractor’s performance of professional services, Contractor releases and shall indemnify, defend, and hold harmless City, City’s officials, employees, agents, and volunteers from and against all claims, costs, damages, lawsuits, penalties, liens, losses, and/or liabilities of any kind or nature, including all expenses of investigating and defending against same, including reasonable attorneys’ fees and costs at trial and on appeal, arising from the willful misconduct or negligent acts, errors, or omissions of Contractor or Contractor’s agents, employees, or subcontractors associated with the Work.

# 18. Insurance

## 18.1. Minimum Requirements

Contractor, at Contractor’s own expense, shall procure and keep in full force and effect the types and coverage amounts of insurance conforming to the minimum requirements required by City, referenced in Minimum Insurance Requirements in the next section.

## 18.2. Insurance Certification

1. **Certificates of Insurance**.
   1. Before Contractor begins Work under the Contract, Contractor shall furnish City with acceptable certificates evidencing the types, amounts, and issuers of insurance coverage meeting the minimum requirements set forth in the Contract.
   2. If a certificate of insurance is unavailable from a particular insurer, then Contractor shall provide City with alternative proof of insurance coverage acceptable to City.
   3. The certificates of insurance shall specify all parties who are Additional Insureds.
2. **Renewal Certificates**. Contractor shall furnish renewal certificates of insurance at least fifteen days before the policy expires.
3. **Deductibles or Self-Insured Retentions**. Contractor shall ensure that any deductibles or self-insured retentions is stated on the certificate of insurance.

## 18.3. Other Insurance Requirements

In all instances concerning the forms of insurance required under the Contract:

1. **Authorized Insurance Business**. The insurance shall be issued by a company authorized to do insurance business in the State of Oregon or by a non-admitted insurer subject to ORS 735.400 to 735.495, the Oregon Surplus Lines Law.
2. **Complete Copies of Policies upon Request**. Contractor shall provide City with complete copies of insurance policies or insurance trust agreements upon request.
3. **Deductibles, Self-Insurance Deductibles or Amounts**. Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and self-insurance amounts.
4. **Umbrella or Excess Liability Insurance**. Umbrella or Excess Liability Insurance may be used to achieve the minimum liability limits, so long as policy is endorsed to state it is “As Broad as Primary Policy.” If Umbrella or Excess Liability policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess Liability Insurance policy may be required.
5. **Notice of Intent to Cancel, Terminate, or Make Material Change to Insurance**. Contractor shall provide City with not less than thirty days’ written notice of Contractor’s intent to cancel, terminate, or make material change affecting required insurance coverage.
6. **Renewal or Replacement Insurance**. Until the insurance is no longer required by City, Contractor shall provide City with evidence of renewal or replacement insurance at least fifteen days before the required insurance expires or is replaced. If at any time during the period when insurance is required by the Contract, an insurer fails to comply with the insurance requirements of the Contract, and Contractor has knowledge of the insurer’s failure, Contractor shall:
   1. promptly notify City, and
   2. immediately replace the insurance with an insurer meeting the same minimum requirements required by the Contract.
7. **Minimum Insurance Rating**. Except for professional liability insurance, the insurance shall be provided by a carrier with A.M. Best’s Rating of A- or better and Financial Performance Rating of 7 or better. Contractor’s professional liability insurance policy shall be written by an insurer satisfactory to City and may be written on a claims made basis, provided Contractor, at Contractor’s own expense, maintains the professional liability insurance in full force for not less than 24 months following completion of the Contract.
8. **Apply on Primary Basis**. The commercial general liability insurance and automobile insurance provided by Contractor and its subcontractors shall apply on a primary basis and be required to respond and pay prior to any other available coverage. Any commercial general liability insurance maintained by City shall be excess of and shall not contribute with the commercial general liability insurance provided by Contractor and its subcontractors.
9. **Right to Change Minimum Insurance Requirements**. City reserves the right to review the types of coverages and limits of insurance required by the Contract from time to time. If City changes its insurance requirements after this Contract is signed, City will provide notice to Contractor of its new requirements. Contractor shall promptly modify its coverage to comply with the new requirements and provide City with updated evidence of coverage. Contractor shall be entitled to an adjustment in the Contract price for any increase in premium resulting from such changes, provided Contractor can establish with reasonable certainty that the increased premium was due to changes required by City. Premium savings from any changes shall be refunded to City.

# 19. Minimum Insurance Requirements

## 19.1. PERSONAL SERVICE (NO AUTO)

**WORKERS’ COMPENSATION INSURANCE AND EMPLOYER LIABILITY INSURANCE**

Contractor shall submit proof of Workers’ Compensation for all persons who are “workers” as defined in ORS 656.005. A person who works under Contractor’s direction and control or where Contractor has the right to control is a person for whom Contractor must show proof of coverage unless the “worker” is a “non-subject” worker exempt from workers’ compensation insurance requirements under ORS 656.027. Out-of-state employers must provide Oregon workers’ compensation coverage for their workers who work in Oregon or show proof of extraterritorial coverage as per ORS 656.126. All contractors and subcontractors required to procure and maintain Workers’ Compensation Insurance shall also procure and maintain Employer Liability Insurance with a combined single limit, or the equivalent, of not less than $500,000 each employee per accident for bodily injury by accident or disease that is in full force and effect for the duration of Contractor or subcontractor’s Work under the Contract. Contractor shall require and ensure that each of its subcontractors who provide labor or services in connection with the Contract provide Oregon workers’ compensation coverage for all their subject workers as required by ORS 656.017 and shall keep on file a certificate of insurance from each subcontractor and anyone else directly employed by either Contractor or subcontractor. Contractor shall consult with its own insurance agent to determine if any person engaged by Contractor to perform any services under the Contract is a “subject worker” for whom Contractor must provide workers’ compensation insurance. Contractor may declare itself exempt from this insurance requirement if it is not an “employer” who contracts to pay remuneration for and secures the right to direct and control the services of any person, as per ORS 656.006(13) to perform the services. A contractor who makes that declaration and who does not provide that insurance may be deemed a non-complying employer under Oregon law. A contractor who makes that declaration agrees to hold City harmless from and indemnify City against any claim for compensation benefits made against City by subject workers employed by Contractor to do any of the Work of the Contract. A contractor who declares itself exempt from providing Workers’ Compensation Insurance coverage otherwise required by this Contract shall make that declaration in signed and dated writing to be attached to the Contract.

**COMMERCIAL GENERAL LIABILITY INSURANCE**

Contractor shall obtain and keep in full force commercial general liability insurance with a combined single limit, or the equivalent, of not less than $2,000,000 per occurrence, with a $2,000,000 annual aggregate limit, covering, but not limited to, liability for personal injury and property damage. Aggregate limits shall apply on a per project basis. The policy shall be written on an occurrence basis on ISO Form CG 00 01 (Commercial General Liability Coverage Form), or its equivalent, and shall include contractual liability covering the assumption of the tort liability (including defense costs) of another party by written contract for both ongoing operations and completed operations under the Contract. City of Beaverton and its officials, employees, agents, and volunteers shall be named as additional insureds under ISO Form CG 2010 (Additional Insureds – Owners, Lessees, or Contractors – Scheduled Person or Organization), or its equivalent, and CG 2037 (Additional Insured – Owners, Lessees, or Contractors – Completed Operations), or its equivalent, with respect to the Work to be provided under the Contract. The commercial general liability insurance coverage required by the Contract is with respect only to the Work described in the Contract, and has no relationship to, or bearing upon, other projects of the insured and is primary and non-contributory with any City insurance or self-insurance program.

## 19.2. WAIVER OF SUBROGATION

Contractor waives Contractor’s right to recover from City, its officials, employees, agents, and volunteers for any damages arising out of Work performed under the Contract and covered by insurance. Any commercial general liability insurance policy and/or automobile liability insurance policy required under the Contract shall be endorsed to provide for a waiver of underwriter’s rights to subrogation as to additional insureds.

# 20. Limitation of Liabilities

Neither Party shall be liable in contract, tort, strict liability, warranty or otherwise for (a) any special, indirect, incidental, consequential, or non-economic damages resulting from or in any way related to the Contract, such as, but not limited to, delay, disruption, loss of product, cost of capital, loss of anticipated profits or revenue, or loss of use of equipment or system; or (b) any damages of any sort whatsoever arising solely from the termination of the Contract in accordance with its terms; provided, however, the provisions of this section do not apply to liability arising under or relating to Section 7 (Representations and Warranties) or Section 10 (Termination).

# 21. Assignment and Delegation

1. Except as provided in subsection (C) of this section, Contractor shall not assign, sell, subcontract, dispose of or transfer rights or delegate its duties under the Contract, either in whole or in part, without City ’s prior written consent.
2. The rights under the Contract may not be assigned or transferred by operation of law, change of control, or merger without City ’s prior written consent.
3. Money due to Contractor may be assigned if Contractor gives prior written notice of the assignment. However, any assignment of money shall be subject to all proper setoffs and withholdings in favor of City.
4. City may rescind the Contract if:
   1. An assignment is made without the prior written consent of City.
   2. The Contract is assigned or transferred by operation of law, change of control, or merger without City's prior written consent.
5. In no instance shall City's consent to an assignment of rights or delegation of duties relieve Contractor of any obligations under the Contract. Any assignee, transferee, or subcontractor shall be considered the agent of Contractor and bound by all provisions of the Contract. Contractor, and its surety, if any, shall be liable to City for complete performance of the Contract as if no such assignment, sale, subcontracting, disposal, transfer, or delegation had occurred, unless City otherwise agrees in writing. The provisions of the Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, if any.

# 22. Notice

## 22.1. Requirement of a Writing; Permitted Methods of Delivery

Unless expressly provided in the Contract, each Party giving or making any notice, request, demand, or other communication (“Notice”) under the Contract shall:

1. Give the notice in writing; and
2. Use one of the following methods of delivery, each of which for purposes of this Contract is a writing:
   1. Personal delivery, or
   2. Mail.

## 22.2. Addressees and Addresses

Each Party giving Notice shall address the Notice to the appropriate person of the receiving Party (“Addressee”) at the address listed below, or to another Addressee or at another address designated by a Party in a Notice pursuant to this section.

|  |  |
| --- | --- |
| **For Contractor**  Baldwin Consulting, LLC  435 El Paraiso Rd NW, Los Ranchos De Albuquerque, NM, 87107 | **For City**  City of Beaverton  Attn: Jessie Hall  P.O. Box 4755  Beaverton, OR 97076-4755 |
|  | With copy to:  City Attorney’s Office  Attn: Grace Wong  P.O. Box 4755  Beaverton, OR 97076-4755 |

## 22.3. Notice Requirements

Except as provided elsewhere in the Contract, a Notice is effective only if the Party giving or making the Notice has complied with subsection (A) and (B) of this section and if Addressee has received the Notice. A Notice is deemed to have been received as follows:

1. If the Notice is delivered in person, upon receipt as indicated by the date on the signed receipt.
2. If the Notice is sent by mail, upon five days after mailing.

# 23. No Third-Party Beneficiaries

City and Contractor are the only parties to the Contract and are the only parties entitled to enforce its terms. Nothing in the Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, either directly, indirectly, or otherwise, to third parties unless such third parties are identified by name in the Contract and expressly described in the Contract as intended beneficiaries.

# 24. Conflict of Interest

Contractor represents that no employee of City, or any partnership or corporation in which a City employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the Contract, except as specifically declared in writing.

# 25. Hazard Communication

To the extent Contractor provides City with any goods that may otherwise release or otherwise result in exposure to a hazardous chemical under normal conditions of use (“Potentially Hazardous Goods”), Contractor shall provide City with a Material Safety Data Sheet on all Potentially Hazardous Goods, and shall label, tag, or mark all Potentially Hazardous Goods.

# 26. Disclosure of Social Security Number

Contractor shall provide Contractor’s Social Security Number (“SSN”), unless Contractor provides an Employer Identification Number or other valid form of Taxpayer Identification Number (“TIN”). This information is requested pursuant to BPC 47-0770. SSN provided pursuant to this authority will be used for the administration of state, federal, and local tax laws. Contractor’s TIN will be reported to the IRS under Contractor’s name and submitted TIN. See IRS 1099 for more information.  Information not matching IRS records may subject Contractor to backup withholding.

# 27. Survival

Expiration of the Contract shall not extinguish or prejudice City's right to enforce the Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured. All representations, indemnifications, warranties, and guarantees made, required by, or given by Contractor in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment to Contractor, completion of the Work and termination or completion of the Contract.

# 28. Governing Law

The Contract is entered into and is to be performed in Oregon and shall be governed by the laws of the State of Oregon, without resort to any jurisdiction’s conflict of laws, rules, or doctrines. Any claim, action, suit, or proceeding between City and Contractor arising out of or relating to the Contract shall be brought solely and exclusively in the Circuit Court of Washington County, Oregon. If the claim must be brought in a federal forum, then the claim shall be brought in the United States District Court for the District of Oregon. Contractor consents to *in personam* jurisdiction of the courts identified in this section.

# 29. Captions

The captions or headings in the Contract are for reference only and shall not affect the meaning or interpretation of the Contract.

# 30. Counterparts

The Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on the Parties, notwithstanding that the Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original. The exchange of signed copies of the Contract by electronic mail in Portable Document Format, or its equivalent, shall constitute effective execution and delivery of the Contract. Signatures on the pages sent through electronic mail shall be deemed to be their original signatures for all purposes.

# 31. Waiver

City’s failure to enforce a provision of the Contract shall not constitute a continuing waiver, shall not constitute a relinquishment of City’s right to performance in the future and shall not operate as a waiver of City’s right to enforce any other provision of the Contract.

# 32. Severability

If any term or provision, or portions of any term or provision, is determined to be illegal, invalid, void, or unenforceable, the remaining terms and provisions of the Contract shall remain in full force if the essential terms and conditions of the Contract for each Party remain valid, binding, and enforceable.

# 33. Merger

This Contract, including any attached exhibits, constitutes the entire and integrated agreement between the Parties and supersedes all prior contracts, negotiations, representations or agreements, either written or oral. All prior and contemporaneous agreements between the Parties on the matters contained in the Contract are expressly merged and superseded by the Contract.

# 34. Compliance with Applicable City Policies and Practices

## 34.1. Branding Manual Requirements

If Contractor’s Work includes any public-engagement materials or any end product that is a public-facing document:

1. Contractor shall comply with City’s branding manual requirements in effect at the time the Contract is executed;
2. City shall provide Contractor with the latest version of City’s branding manual before Contractor begins Work on the Contract.
3. As used in this subsection:
   1. “Public-engagement materials” includes, but is not limited to, flyers, postcards, posters, and handouts.
   2. “Public-facing document” includes any document that City intends to distribute to the public for the public to read and understand.

The Parties, by their signatures below, acknowledge having read and understood the Contract, and agree to be bound by its terms and conditions.

**AGREED TO BY THE PARTIES**:

|  |  |
| --- | --- |
| **City Of Beaverton** | **BALDWIN CONSULTING LLC** |
|  |  |
| By: | By: |
|  |  |
| Print Name: | Print Name: |
|  |  |
| Title:    Assistant City Manager | Title: |
|  |  |
| Date: | Date: |
|  |  |
|  |  |
| Approved as to legal sufficiency: | City of Beaverton Business License No.: |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | COBID Certification No.: |
| City Attorney |  |