

**CITY OF LINCOLN, NEBRASKA
CONSULTANT AGREEMENT**

THIS CONSULTANT AGREEMENT (Agreement) is entered into by and between City of Lincoln, Nebraska, a municipal corporation and Nebraska political subdivision (City), and

(Consultant).

RECITALS

WHEREAS, City proposes to engage Consultant in accordance with the terms and conditions set forth herein to render professional assistance in

(Work) and;

WHEREAS, Consultant possesses certain skills, experience, education, and competency to perform the Work on behalf of City, and City desires to engage Consultant for such Work on the terms herein provided; and

WHEREAS, Consultant hereby represents that Consultant is willing and able to perform the Work in accordance with the proposed Work submitted with this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the above Recitals and the mutual obligations of the parties hereto, the parties hereto agree as follows:

1. **Contract Administrators.** _____, of City's _____ Department, shall be City's representative for the purposes of administering this Agreement and shall have authority on behalf of City to give approvals under this Agreement. _____, Consultant's representative will supervise all services and be in charge of performance of the Work as set forth in this Agreement.

2. **Scope of Services.** Consultant agrees to timely and professionally complete the Work described above and herein, furnish and pay all costs, including any related taxes, and to furnish all labor, supplies and material and everything else reasonably necessary to complete the same unless specifically provided otherwise in this Agreement for the services listed in the Scope of Services (Scope), attached hereto. Such Scope of Services may also be referred to as "the Work." To the extent that the Scope, Consultant's proposal, or any other attachment hereto is in conflict with this Agreement, this Agreement shall control.

3. **Additional Services or Change in Scope.** City may from time to time, require additional services, not set forth in the Scope, from Consultant including but not limited to, special reports, graphics, attendance at meetings, or presentations. Such services, including the amount of compensation for such additional services, which are mutually agreed upon by and between City and Consultant shall be effective when incorporated in written amendments to this Agreement. Additional services shall not be compensated or expenses reimbursed until the amendment is executed.
4. **Term of Agreement.** The term of this Agreement shall commence and is deemed effective on _____ [Execution date or specific date], and shall continue until completion of all obligations of this Agreement, but in no event longer than [Specific date]_____, unless approved extensions/renewals are issued by written amendment.
5. **Compensation.** City agrees to pay Consultant for the Work set forth in the attachments a sum not to exceed _____ Dollars (\$_____). Unless otherwise set forth in the attachments, invoices shall be payable as follows:
 - Monthly
 - Lump Sum
 - Other: _____Invoices must present approved and allowable activities of Consultant and/or any subcontractors showing not less than actual hours worked, hourly rates applied, actual expenses incurred unless otherwise specified in the Scope or Fee Schedule, and any applicable supporting documentation, such as, but not limited to, receipts. All invoices shall be in a format acceptable to City.
6. **Cost Overruns.** Consultant is responsible for determining if the actual fees or expenses will exceed the maximum amount stated above. If at any time during the Work, Consultant determines that the fees or expenses will exceed, or have exceeded the maximum amount stated above, Consultant must immediately notify City in writing and describe which fees or expenses are causing the overrun and the reason. Consultant must also estimate the additional fees or expenses needed to complete the Work. City will then determine if the maximum amount is to be increased, remain the same, or determine if the Scope of the Work needs to be modified or terminated. An amendment will be executed if cost overruns are authorized by City.
7. **Remaining Work.** At or before [sixty (60)] days prior to expiration of this Agreement, Consultant shall provide a written communication to City identifying Work still to be done, whether sufficient funds remain in the Agreement to complete the Work, and anticipated changes in Scope of Work so that the parties can determine whether or if the term of the Agreement should be extended. City may waive this requirement.
8. **Final Payment.** The acceptance of the final payment will constitute and operate as a release to City for all claims and liability of Consultant, its representatives, and assigns, for any and all things done, furnished, or relating to the services and Work rendered by or in connection with this Agreement or any part thereof. Consultant agrees to reimburse City for any

overpayments.

9. **Services; Confidentiality.** All services, including reports, opinions, and information to be furnished under this Agreement, shall be considered confidential and shall not be divulged by the Consultant, in whole or in part, to any person other than to duly authorized representatives of City, without the prior written approval of City. The parties understand that City is a governmental entity and may be required to disclose information to the extent required by law or by order of a court of competent jurisdiction or other government entity. Any party may avail itself of any remedy allowed by law to respond or object to the disclosure. The provisions in this section shall survive any termination of this Agreement.
10. **City Employees; Raiding Prohibited.** No present or former officer or employee of the City may participate or be engaged to assist in services, including professional services, directly or indirectly to the Consultant for work covered by this Agreement for a period of six months after separation from the City pursuant to Lincoln Municipal Code § 2.54.050.
11. **Assignment.** Consultant shall not assign any interest in this Agreement, except for the work of the subcontractors identified in this Agreement, delegate any duties or work required under this Agreement, or transfer any interest in the same (whether by assignment or novation), without an executed amendment thereto; provided, however, that claims for money due or to become due to Consultant from City under this Agreement may be assigned without such approval, but notice of any such assignment shall be furnished promptly to City.
12. **Interest of Consultant.** Consultant agrees that Consultant presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of the Work required to be performed under this Agreement. Consultant further agrees that, in the performance of this Agreement, no person having any such interest shall be employed or retained by Consultant under this Agreement.
13. **Termination of Agreement.** Termination may occur for any of the following reasons:
 - a) This Agreement may be terminated by City or Consultant if the other party fails to adequately perform any material obligation required by this Agreement (Default). Termination rights under this section may be exercised only if the defaulting party fails to cure a Default within ten (10) calendar days after receiving written notice from the non-defaulting party specifying the nature of the Default.
 - b) City may terminate this Agreement, in whole or part, for any reason for City's own convenience upon at least ten (10) calendar days written notice to Consultant.
 - c) City may terminate this Agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of City. In the event of unavailability of funds to pay any amounts due under this Agreement, City shall immediately notify Consultant, and this Agreement shall terminate without penalty or expense to City. Upon termination, City shall pay Consultant for any approved and documented Work completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

- d) If the Agreement is terminated by City as provided in (b) or (c) above, Consultant shall be paid for all Work performed, and reimbursable expenses incurred, not to exceed the maximum amount payable under the compensation section above, up until the date of termination. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this section in the event of termination.
- e) Consultant agrees that, upon termination as provided in this section, Consultant shall not be employed by any developer or other party who is or may be interested in the Work for one (1) year after such termination, without prior approval of City.
- f) City reserves the right to withhold payment for Work rendered that is not in compliance with this Agreement.

14. **Independent Contractor.** City is interested only in the results produced by this Agreement. Consultant has sole and exclusive charge and control of the manner and means of performance. Consultant shall perform as an independent contractor, and it is expressly understood that neither Consultant nor any of its staff are employees of City and are not entitled to any City benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, injury leave, or other leave provisions.

15. **Fair Employment.** Consultant shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, Neb. Rev. Stat. § 48-1122, as amended, or such similar federal law as may be applicable.

16. **Fair Labor Standards.** Consultant shall maintain Fair Labor Standards in the performance of this Agreement as required by Chapter 73, Nebraska Revised Statutes, as amended.

17. **Insurance; Coverage.** Consultant, prior to beginning the Work, agrees to City's Insurance requirements and shall provide proof of insurance coverage in a form satisfactory to City, which shall not withhold approval unreasonably, with the coverages, minimum limits, and endorsements described in the INSURANCE REQUIREMENTS FOR ALL CITY OF LINCOLN, LANCASTER COUNTY, AND PUBLIC BUILDING COMMISSION CONTRACTS, attached and incorporated herein.

18. **Indemnification.** To the fullest extent permitted by law the Consultant shall indemnify, defend, and hold harmless City, its elected officials, officers, employees, agents, consultants, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible or intangible property, including the Work itself, but only to the extent caused by the negligent, wrongful, or intentional acts or omissions of Consultant, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the

negligence of a party indemnified hereunder. In the event the claim, damage, loss or expense is caused in part by the negligence of a party indemnified hereunder, the indemnification by Consultant shall be prorated based on the extent of the liability of the party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce obligations of indemnity which would otherwise exist as to a party or person described in this section.

19. **Sovereign Immunity.** Nothing contained in this clause or other clauses of this Agreement shall be construed to waive the sovereign immunity of City.

20. **Copyrights, Royalties, and Patents; Warranty.** Without exception, Consultant represents and warrants that the consideration for this Agreement includes Consultant's payment, if any, for any and all royalties or costs due any third party arising from patents, trademarks, copyrights, and other similar intangible rights claimed by any such third party in any way involved with or related to the Work provided herein by Consultant pursuant to this Agreement. Further, Consultant shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Consultant represents that all materials, processes, or other protected rights, if any, to be used in the creation of the Work have been duly licensed or authorized by the appropriate parties for such use. Consultant agrees to furnish City upon demand written documentation of such license or authorization and if unable to do so, Consultant agrees that City may withhold a reasonable amount from Consultant's compensation herein to defray any associated costs to secure such license or authorization or defend any infringement claim.

a) Consultant shall indemnify City and defend suits or claims for infringement for damages, including but not limited to attorney's fees, of any patent, copyright, trademark, or other intangible rights that Consultant has used in the course of performing this Agreement.

b) Consultant represents and warrants to City that it is free to enter into this Agreement and that the performance thereunder will not conflict with any other Agreement to which Consultant may be a party. Consultant represents and warrants to City that the Service provided is free and clear of any claims or encumbrances and does not infringe on the rights of any third parties.

c) Consultant agrees to and hereby transfers all right, title, and interest, including those of a property or copyright nature, in any reports, studies, data, website creation, digital files, imagery, metadata, maps, statistics, forms, and any other works or materials produced under the terms of this Agreement upon payment therefor by the City. No such work or materials produced, in whole or in part, under this Agreement, shall be subject to private use or copyright by Consultant without express written consent of City. City shall have the unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as City deems appropriate. Consultant warrants that all materials, processes or other protected rights to be used have been duly licensed or authorized for City's use. In the event the Work or materials produced herein are substantially modified without the consent of the Consultant or used in any project other than the Work or materials under this Agreement, the City shall indemnify and hold the Consultant harmless from

liability to the extent that the modification or use on a different project is the cause of the liability, including defense costs.

21. **Consultant's Standard of Care.** In providing the Work under this Agreement, Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. Upon notice to Consultant and by mutual agreement between the parties, Consultant will, without additional compensation, correct those services not meeting the standard set forth herein. Consultant further agrees that the Work provided shall conform to the requirements of this Agreement.

22. **Notice.** Any notice, requests, demands, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed given if personally delivered on the other party by the party giving such notice, or mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight carrier, to the following addresses:

City of Lincoln, Nebraska
Department: _____
Attention: _____

Lincoln, NE 685 _____

Consultant: _____
Attention: _____

[ADDRESS]

[CITY, STATE, ZIP]

23. **Compliance with Law.** Consultant shall comply with all Federal, State, and local laws, rules, and regulations applicable to the Work, including applying for and obtaining all necessary permits, certifications, licenses, and approvals required by the law or regulations that relate to the Work.

24. **Nebraska Law.** This Agreement shall be construed pursuant to the laws of the State of Nebraska.

25. **Integration; Amendment; Severability; Waiver.** This Agreement represents the entire agreement between the parties, and all prior negotiations and representations are hereby expressly excluded from this Agreement. The recitals at the beginning of this Agreement are made a part hereof by this reference. This Agreement may be amended only by written agreement signed by both parties. This Agreement shall be binding upon the successors and assigns of the parties hereto. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement, and invalidity of any section of this Agreement shall not invalidate any other section thereof. The failure of either party to enforce any section of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every section of this Agreement.

26. **Audit and Review.** This Agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code, and Consultant shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials

germane to this Agreement, as allowed by law. Consultant shall maintain, and also require that its sub-consultants/subcontractors maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at Consultant's office at all reasonable times during the Agreement term and for five (5) years from the date of final payment under this Agreement. Such materials must be available for inspection by City, State, or any authorized representative of the state or federal governments and, when requested, Consultant shall furnish copies.

27. **Federal Immigration Verification.** In accordance with Neb. Rev. Stat. §4-108 through §4-114, Consultant agrees to register with and use a federal immigration verification system to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. §1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. Consultant shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. §1324b. Consultant shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.
- a) **Attestation Form.** If Consultant is an individual or sole proprietor, Consultant agrees to complete the United States Citizenship Attestation Form as provided by City and attach it to the Agreement.
- b) **Public Benefits Eligibility Status Check.** If Consultant is agreeing to determine eligibility for and provide a public benefit as public benefit is defined under Neb. Rev. Stat. §§4-108 through 4-114, Consultant agrees to have each applicant for public benefits attest that he or she is a U.S. citizen or qualified alien using the form attached. Consultant agrees to register and use the SAVE Program as required under Neb. Rev. Stat. §§4-108 through 4-114. If the applicant indicates he or she is an alien, Consultant shall verify the applicant's lawful presence in the United States as provided under the SAVE Program and retain all documentation and provide copies of such documentation at City's request. For information on the SAVE program, go to www.uscis.gov/SAVE.
28. **Living Wage.** If the compensation for the Work provided pursuant to this Agreement is equal to or exceeds \$25,000, this Agreement is subject to the Living Wage Ordinance of the Lincoln Municipal Code Chapter 2.81. The ordinance requires that, unless specific exemptions apply or a waiver is granted, Consultant shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under the provisions of the Lincoln Living Wage Ordinance, City shall have authority to terminate this Agreement and to seek other remedies for violations of this ordinance.
29. **Records Retention.** Unless City specifies in writing a different period of time, Consultant agrees to preserve and make available at reasonable times all of its books, documents, papers, records, and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of the expiration or termination of

this Agreement. See City of Lincoln Records Retention Schedule. Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

30. **Document Control Clause.** The Agreement includes the following documents in order of priority:

- a) Addendums, amendments, or change orders (if any) to the Scope of Services Schedule, Fee, or this Agreement (if any);
- b) Scope of Services, schedule, and fees;
- c) Insurance requirements, certificates, and endorsements;
- d) _____
- e) _____

31. **Capacity.** Each party hereby represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid, and binding obligation of said party.

IN WITNESS WHEREOF, Consultant and City do hereby execute this Agreement as of the date of execution set forth below.

CITY OF LINCOLN, NEBRASKA

Date: _____

By: _____
Leirion Gaylor Baird, Mayor

OR *Department Director if \$50,000 or less*

Date: _____

Director: _____

Department: _____

CONSULTANT

Date: _____

By: _____

Name: _____

Title: _____