

**PROFESSIONAL SERVICES AGREEMENT
FOR
CHARITABLE FUND ADMINISTRATION SERVICES**

This Professional Services Agreement ("Agreement") is effective as of the date of the last authorizing signature. The parties ("Parties") to this Agreement are the City of Olympia, a Washington municipal corporation ("City"), and Community Action Council of Lewis, Mason and Thurston Counties, a Washington non-profit corporation ("Consultant").

A. The City seeks the temporary professional services of a skilled independent consultant capable of working without direct supervision in the capacity of administering a utility rate assistance charitable fund, and

B. Consultant has the requisite skill and experience necessary to provide such services.

NOW, THEREFORE, the Parties agree as follows:

1. Services.

Consultant shall provide the services more specifically described in Exhibit "A," attached hereto and incorporated by this reference ("Services"), in a manner consistent with the accepted practices for other similar services, and when and as specified by the City's representative.

2. Term.

The term of this Agreement commences on the effective date of this Agreement and continues until the completion of the Services, but in any event no later than December 31, 2022 ("Term"). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Consultant.

3. Termination.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause by the City.

4. Program Funding

A. The CITY shall deposit with the Consultant the sum of Five Thousand Dollars (\$5,000.00) and solicit voluntary donations from its utility customers to augment said sum in order for the CONSULTANT to carry out the terms of this Agreement and complete those services called for in Exhibit "A" attached hereto. The Consultant receives no compensation for administering a utility rate assistance charitable fund.

B. Method of Payment. Payment of charitable funds received by the City in the prior month will be paid to the Consultant by the 15th day of the following month.

C. Consultant Responsible for Taxes. The Consultant is solely responsible for the payment of and shall pay any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

5. Compliance with Laws.

Consultant shall comply with and perform the Services in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or amended.

6. Assurances.

The Consultant affirms that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Olympia by obtaining a City of Olympia business registration.

7. Independent Contractor/Conflict of Interest.

It is the intention and understanding of the Parties that the Consultant is an independent contractor and that the City is neither liable nor obligated to pay Consultant sick leave, vacation pay, or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Consultant shall pay all income and other taxes due. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Consultant, does not convert this Agreement to an employment contract. It is recognized that Consultant may be performing professional services during the Term for other parties; provided, however, that such performance of other services may not conflict with or interfere with Consultant's ability to perform the Services. Consultant agrees to resolve any such conflicts of interest in favor of the City.

8. Equal Opportunity Employer.

A. In all Consultant services, programs, and activities, and all Consultant hiring and employment made possible by or resulting from this Agreement, Consultant and Consultants' employees, agents, subcontractors, and representatives shall not unlawfully discriminate against any person based on any legally protected class status including but not limited to: sex, age (except minimum age and retirement provisions), race, color, religion, creed, national origin, marital status, veteran status, sexual orientation, gender identity, genetic information or the presence of any disability, including sensory, mental or physical handicaps; provided, however, that the prohibition against discrimination in employment because of disability does not apply if the particular disability prevents the performance of the essential functions required of the position.

This requirement applies to, but is not be limited to, the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding nondiscrimination. Any material violation of this provision is grounds for termination of this Agreement by the City and, in the case of the Consultant's breach, may result in ineligibility for further City agreements.

B. In the event of Consultant's noncompliance or refusal to comply with the above nondiscrimination plan, this Agreement may be rescinded, canceled, or terminated in whole or in part, and the Consultant may be declared ineligible for further agreements or contracts with the City. The Consultant, will, however, be given a reasonable time in which to correct this noncompliance.

C. To assist the City in determining compliance with the foregoing nondiscrimination requirements, Consultant shall complete and return, and is bound by, the *Statement of Compliance with Nondiscrimination* attached as Exhibit B.

9. Confidentiality.

Consultant shall not disclose any information and/or documentation obtained by Consultant in performance of this Agreement that has been expressly declared confidential by the City. Breach of confidentiality by the Consultant is grounds for immediate termination.

10. Indemnification/Insurance.

A. Indemnification / Hold Harmless. Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder is only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section survive the expiration or termination of this Agreement.

B. Insurance Term. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

C. No Limitation. Consultant's maintenance of insurance as required by the Agreement may not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

D. Minimum Scope of Insurance. Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage must be at least as broad as ISO occurrence form (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance must be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, stop gap liability, personal injury, and advertising injury. The City must be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

E. Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance must be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.

3. Professional Liability insurance must be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

F. Other Insurance Provisions. The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they are primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City is excess of the Consultant's insurance and does not contribute with it.

G. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

H. Verification of Coverage. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

I. Notice of Cancellation. The Consultant shall provide the City with written notice of any policy cancellation, within two (2) business days of their receipt of such notice.

J. Failure to Maintain Insurance. Failure on the part of the Consultant to maintain the insurance as required is a material breach of contract, upon which the City may, after giving five (5) business days' notice to the Consultant to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

K. City's Full Access to Consultant Limits. If the Consultant maintains higher insurance limits than the minimums shown above, the City is insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

11. Work Product.

Any deliverables identified in the Scope of Work or otherwise identified in writing by the City that are produced by Consultant in performing the Services under this Agreement and which are

delivered to the City belong to the City. Consultant shall deliver any such work product to the City at the termination or cancellation date of this Agreement, or as soon thereafter as possible. All other documents are owned by the Consultant.

12. Treatment of Assets.

- A. Title to all property furnished by the City remains in the name of the City.
- B. Title to all nonexpendable personal property and all real property purchased by the Consultant, the cost of which the Consultant is entitled to be reimbursed as a direct item of cost under this Agreement, passes to and vests in the City, or if appropriate, the state or federal department supplying funds therefor, upon delivery of such property by the Consultant. If the Consultant elects to capitalize and depreciate such nonexpendable personal property in lieu of claiming the acquisition cost as a direct item of cost, title to such property remains with the Consultant. An election to capitalize and depreciate or claim acquisition cost as a direct item of cost is irrevocable.
- C. Nonexpendable personal property purchased by the Consultant under the terms of this Agreement in which title is vested in the City may not be rented, loaned, or otherwise passed to any person, partnership, corporation/association, or organization without the prior express written approval of the City or its authorized representative, and such property may, unless otherwise provided herein or approved by the City or its authorized representative, be used only for the performance of this Agreement.
- D. As a condition precedent to reimbursement for the purchase of nonexpendable personal property, title to which vests in the City, the Consultant must execute such security agreements and other documents as are necessary for the City to perfect its interest in such property in accordance with the "Uniform Commercial Code--Secured Transactions" as codified in Article 9 of Title 62A, the Revised Code of Washington.
- E. The Consultant is responsible for any loss or damage to the property of the City including expenses entered thereunto which results from negligence, willful misconduct, or lack of good faith on the part of the Consultant, or which results from the failure on the part of the Consultant to maintain and administer in accordance with sound management practices that property, to ensure that the property will be returned to the City in like condition to that in which it was furnished or purchased, fair wear and tear excepted.
- F. Upon the happening of loss or destruction of, or damage to, any City property, the Consultant shall notify the City or its authorized representative and shall take all reasonable steps to protect that property from further damage.
- G. The Consultant shall surrender to the City all property of the City within thirty (30) days after rescission, termination, or completion of this Agreement unless otherwise mutually agreed upon by the parties.

13. Books and Records/Public Records.

The Consultant shall maintain books, records, and documents which sufficiently and properly reflect all work, as well as direct and indirect costs, related to the performance of this Agreement. In addition, Consultant shall maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. All Consultant records related in any way to this Agreement are subject, at all reasonable times, to

inspection, review, copying, or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

Records prepared, owned, used, or retained by the City that meet the definition of a “public record” in Chapter 42.56 RCW, even if records are in the possession of the Consultant, are subject to disclosure under Washington’s Public Records Act. Whether or not the records meet the definition of a public record is the City’s determination. If the Consultant disagrees with the City’s determination or believes the records to be subject to an exemption, the City will provide the Consultant with ten (10) calendar days to obtain and serve on the City a court order specifically preventing release of such records.

Should the Consultant fail to provide records related to this Agreement to the City within ten (10) calendar days of the City’s request for such records, Consultant shall indemnify, defend, and hold the City harmless for any public records judgment against the City for failure to disclose and/or release such records, including costs and attorney’s fees. This section survives expiration of the Agreement.

14. Non-Appropriation of Funds.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City is not obligated to continue the Agreement after the end of the current fiscal period, and this Agreement automatically terminates upon the completion of all remaining Services for which funds are allocated. No penalty or expense accrues to the City in the event this provision applies.

15. General Provisions.

A. Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements are effective for any purpose.

B. Modification. No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.

C. Full Force and Effect; Severability. Any provision of this Agreement that is declared invalid or illegal in no way affects or invalidates any other provision hereof and such other provisions remain in full force and effect. Further, if it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, the provision appears to conflict therewith must be deemed inoperative and null and void insofar as it may be in conflict therewith, and must be deemed modified to conform to such statutory provision.

D. Assignment. Neither the Consultant nor the City may transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

1. If the Consultant desires to assign this Agreement or subcontract any of its work hereunder, the Consultant shall submit a written request to the City for approval not less than fifteen (15) days prior to the commencement date of any proposed assignment or subcontract.

2. Any work or services assigned or subcontracted for hereunder are subject to each provision of this Agreement.

3. Any technical/professional service subcontract not listed in this Agreement, which is to be charged to this Agreement, must have prior written approval by the City.

4. The City reserves the right to inspect any assignment or subcontract document.

E. Successors in Interest. Subject to the foregoing Subsection, the rights and obligations of the Parties inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.

F. Attorney Fees. In the event either of the Parties defaults on the performance of any term of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, the prevailing party is entitled to its reasonable attorneys' fees, costs, and expenses to be paid by the other Party.

G. No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

H. Governing Law. This Agreement is governed by and must be interpreted in accordance with the laws of the State of Washington.

I. Authority. Each individual executing this Agreement on behalf of the City and Consultant represents and warrants that such individual is duly authorized to execute and deliver this Agreement on behalf of the Consultant or the City.

J. Notices. Any notices required to be given by the Parties must be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail must be deemed received three (3) days after the date of mailing.

K. Captions. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and may not be deemed to modify or otherwise affect any of the provisions of this Agreement.

L. Performance. Time is of the essence in performance of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Consultant's performance of this Agreement.

M. Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but are cumulative with all other remedies available to the City at law, in equity, or by statute.

N. Counterparts. This Agreement may be executed in any number of counterparts, which counterparts collectively constitute the entire Agreement.

O. Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity may be construed against any party upon a claim that that party drafted the ambiguous language.

P. Venue. All lawsuits or other legal actions whatsoever with regard to this agreement must be brought in Thurston County, Washington, Superior Court.

Q. Ratification. Any work performed prior to the effective date that falls within the scope of this Agreement and is consistent with its terms is hereby ratified and confirmed.

R. Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

1. By signing the agreement below, the Consultant certifies to the best of its knowledge and belief, that it and its principles:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and

d. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

2. Where the Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this proposal.

S. Early Retirement from the State of Washington- Certification. By signing this form, Consultant certifies that no one being directly compensated for their services pursuant to this Agreement has retired from the Washington State Retirement System using the 2008 Early Retirement Factors with restrictions on returning to work.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF OLYMPIA

By: _____

Steven J. Burney, City Manager

P.O. Box 1967

Olympia WA 98507-1967

Date of Signature: _____

APPROVED AS TO FORM:

Michael M. Young

Deputy City Attorney

I certify that I am authorized to execute this Agreement on behalf of the Consultant.

COMMUNITY ACTION COUNCIL OF LEWIS, MASON & THURSTON COUNTIES

By: Kirsten York

Kirsten York

Interim Chief Executive Officer

3020 Willamette Drive NE

Lacey, WA 98516

Date of Signature: 05/20/2021

EXHIBIT A

SCOPE OF SERVICES

The City of Olympia (City) will make a one-time deposit of the sum of Five Thousand Dollars (\$5,000.00) as “seed money” to get the program started. Donations will be solicited by the City from its utility customers to keep the program running. Donations can be included in the customer's utility payments or by separate donation payments to the City of Olympia.

Consultant shall follow the procedures below in the administration of the program:

Program Parameters

1. City Utility customers may receive assistance up to twice per calendar year as long as funding is available and assistance criteria (set forth below) are met.
2. Customers may receive up to \$75 per request as long as funding is available and assistance criteria are met.
3. The frequency and dollar amount of assistance may be adjusted through an amendment to this Agreement.

Assistance Criteria

Utility customers may qualify for assistance if each of the following criteria is met:

1. The total gross household income is equal to or less than fifty percent of the median household income in Thurston County (\$75,924 for 2020).
 - o The Community Action Council will determine the income level using, *but not limited to*, any of the following documentation:
 - Pay stubs
 - Employee's W-2 Form
 - Wage tax receipts
 - Income Tax Return
 - Self-employment IRS forms I 040, Schedule C or F
 - Sales records
 - Worker's Compensation award letter or payment notification
 - Pension award letter or payment notification
 - Veteran's Administration award letter or payment notification
 - Retirement award letter or payment notification
 - Statement from employer
 - Support Enforcement award letter or payment notification
 - Union records
 - Social Security award letter or payment notification
2. The customer's City of Olympia utility account is in past due status. Customers will provide the Community Action Council a past due notice from the City of Olympia.
3. The customer has not previously received utility assistance two times in the current calendar year.

Donation Procedures

1. City of Olympia Utility customer will be able to make donations to the program by a separate payment to the City of Olympia or can be included with a customer's utility bill payment.
2. The City of Olympia will receipt and hold the donations separately from City utility payments and fund until it can be remitted to the Community Action Council.
3. The City of Olympia will remit donations to the Community Action Council once per month.
4. Customers in need of assistance will be referred to the Community Action Council for program screening.
5. The Community Action Council will be responsible for determining whether a customer is eligible based on the above criteria.
6. The assistance funds will be disbursed directly to the City of Olympia on a "semi-monthly basis" (twice a month) The Community Action Council will include account information so that the proper accounts will be credited.

Program Reporting

The Community Action Council will provide utility assistance program quarterly reports to the City of Olympia. The reports will include the following:

1. Total number of customers served
2. Remaining balance of available program funds

Program Funds Audit

The Community Action Council will make available program records for review by the City of Olympia.

Exhibit "B"

STATEMENT OF COMPLIANCE WITH NONDISCRIMINATION REQUIREMENT

The Olympia City Council has made compliance with the City's *Nondiscrimination in Delivery of City Services or Resources* ordinance (OMC 1.24) a high priority, whether services are provided by City employees or through contract with other entities. It is important that all contract agencies or vendors and their employees understand and carry out the City's nondiscrimination policy. Accordingly, each City agreement or contract for services contains language that requires an agency or vendor to agree that it shall not unlawfully discriminate against an employee or client based on any legally protected status, which includes but is not limited to: race, creed, religion, color, national origin, age, sex, marital status, veteran status, sexual orientation, gender identity, genetic information, or the presence of any disability. Indicate below the methods you will employ to ensure that this policy is communicated to your employees, if applicable.

Community Action Council affirms compliance with the City of Olympia's nondiscrimination ordinance and contract provisions. **Please check all that apply:**

Nondiscrimination provisions are posted on printed material with broad distribution (newsletters, brochures, etc.).

What type, and how often? _____

Nondiscrimination provisions are posted on applications for service.

Nondiscrimination provisions are posted on the agency's web site.

Nondiscrimination provisions are included in human resource materials provided to job applicants and new employees.

Nondiscrimination provisions are shared during meetings.

What type of meeting, and how often? Annual staff meeting

If, in addition to two of the above methods, you use other methods of providing notice of nondiscrimination, please list:

If the above are not applicable to the contract agency or vendor, please check here and sign below to verify that you will comply with the City of Olympia's nondiscrimination ordinance.

Failure to implement the measures specified above or to comply with the City of Olympia's nondiscrimination ordinance constitutes a breach of contract.

By signing this statement, I acknowledge compliance with the City of Olympia's nondiscrimination ordinance.

Kirsten York
(Signature)

06/01/2021
(Date)

John M. Walsh Kirsten York
Print Name of Person Signing

Alternative Section for Sole Proprietor: I am a sole proprietor and have reviewed the statement above. I agree not to discriminate against any client, or any future employees, based on any legally protected status.

(Sole Proprietor Signature)

(Date)