

**CITY OF SANDY, OREGON**  
**PROFESSIONAL SERVICES AGREEMENT**

The City of Sandy, Oregon ("City") and **Keller Associates, Inc** ("Consultant") enter into this Agreement on August 18, 2022 ("Effective Date").

WHEREAS, City and Consultant believe it in their respective and mutual interests to enter into a written Agreement setting out their understandings concerning Consultant's provision for **Sandercock Reservoir Repairs** services as described in Exhibit A.

**1. Term**

This Agreement shall run from the Effective Date through and including August 31, 2023, unless sooner terminated under the provisions of this Agreement or extended through an amendment.

**2. Consultant's Service**

The scope of Consultant's services and time of performance under this Agreement are set forth in Exhibit "A". All provisions and covenants contained in Exhibit A are incorporated by reference and are a part of this Agreement as if fully set forth. Any conflict between this Agreement and Exhibit A shall be resolved first in favor of this written Agreement. Consultant will, in the rendering of its services to City, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this Agreement. The parties may only change the scope of services through an amendment.

**3. Consultant Identification**

Consultant's employer identification number, as designated by the Internal Revenue Service, is 45-0574227.

**4. Compensation**

City agrees to pay Consultant at an on-call hourly rate as set out in Exhibit "A".

**5. Primary Staff Contact**

City's Primary Staff Contact is Jennifer Coker Consultant's Primary Staff Contact is Jason King Each party shall give the other written notification of any change in their respective Primary Staff Contact.

**6. Project Information**

Consultant agrees to share all project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the project. No information, news, or press releases related to the project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of City's Primary Staff Contact.

## **7. Duty to Inform**

Consultant shall give prompt written notice to City's Primary Staff Contact if, at any time during the performance of this Agreement, Consultant becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Agreement, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Consultant shall constitute neither agreement with nor acquiescence in Consultant's statement or claim and shall not constitute a waiver of any of City's rights.

## **8. Consultant is Independent Contractor**

Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Agreement. Consultant hereby expressly acknowledges and agrees that as an independent contractor, Consultant is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgment by Consultant shall not affect his/her independent ability (or the ability of his/her/its insurer) to assert the monetary limitations found at ORS 30.270, the immunities listed at ORS 30.265 or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS30.300).

## **9. Overtime**

Any person employed on work under this Agreement, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC§201 to 209, shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week.

## **10. Indemnity and Insurance**

- i. Indemnity: Consultant acknowledges responsibility for any and all liability arising out of the performance of this Agreement and shall hold City harmless from and indemnify and defend City for any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's acts, omissions, activities or services in the course of performing this Agreement.
- ii. Liability Insurance: Consultant shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Consultant, City, its Councilors, officers, agents and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Consultant's operations, in an amount not less than Two Million dollars (\$2,000,000.00) combined single limit per occurrence. Such insurance shall name City as an additional insured.
- iii. Errors & Omissions Insurance: Consultant shall maintain professional liability insurance in the amount of not less than \$2,000,000 per claim. Consultant shall keep in force the professional liability policy for at least 24 months after the expiration of the Agreement with City. In any case, Consultant shall notify City in the event of a cancellation or reduction in limits. Unless such cancellation or reduction is immediately cured by

- Consultant, such cancellation or reduction constitutes a breach of this Agreement.
- iv. Workers' Compensation Coverage: Consultant certifies that Consultant has qualified for State of Oregon Workers' Compensation coverage for all Consultant's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407, or as a self-insured employer. Consultant shall provide to City within ten (10) days after Agreement award a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Consultant is self-insured.
  - v. Certificates: Consultant shall furnish City certificates evidencing the date, amount, and type of insurance required by this Agreement. All policies will provide for not less than thirty (30) days' written notice to City before they may be canceled.
  - vi. Primary Coverage: The coverage provided by insurance required under this Agreement shall be primary, and any other insurance carried by City shall be excess.

#### **11. Work is Property of City**

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Consultant under this Agreement shall be the property of City.

#### **12. Law of Oregon**

The Agreement shall be governed by the laws of the State of Oregon, without regard to conflict of laws principles. Venue shall be in Clackamas County, Oregon.

#### **13. Errors**

Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

#### **14. Additional Work**

Only the City Manager, Primary Staff Contact, or the Primary Staff Contact's representative may authorize additional work. Failure of Consultant to secure authorization for additional work shall constitute a waiver of all right to adjustment in the Agreement price or Agreement time due to such unauthorized extra work and Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work.

#### **15. Successors and Assignments**

- i. Both City and Consultant bind themselves and any partner, successor, executor, administrator, or assign to this Agreement.
- ii. Neither City nor Consultant shall assign or transfer their interest or obligation hereunder in

this Agreement without the written consent of the other party. Except for subconsultants identified in Exhibit A, Consultant must seek and obtain City's written consent before subcontracting any other part of the work required of Consultant under this Agreement. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

## **16. Records**

- i. Consultant shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least three years after City makes final payment on this Agreement and all other pending matters are closed.
- ii. Consultant shall allow City (or any of its authorized representatives) to audit, examine, copy, take excerpts from or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

## **17. Breach of Agreement**

- i. Consultant shall remedy any breach of this Agreement within the shortest reasonable time after Consultant first has actual notice of the breach or City notifies Consultant of the breach, whichever is earlier. If Consultant fails to remedy a breach in accordance with this paragraph, City may terminate that part of the Agreement affected by the breach upon written notice to Consultant, may obtain substitute services in a reasonable manner, and may recover from Consultant the amount by which the price for those substitute services exceeds the price for the same services under this Agreement.
- ii. If the breach is material and Consultant fails to remedy the breach in accordance with this paragraph, City may declare Consultant in default and pursue any remedy available for a default.
- iii. Pending a decision to terminate all or part of this Agreement, City unilaterally may order Consultant to suspend all or part of the services under this Agreement. If City terminates all or part of the Agreement pursuant to this paragraph, Consultant shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Agreement and later orders Consultant to resume those services, Consultant shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
- iv. To recover amounts due under this paragraph, City may withhold from any amounts owed by City to Consultant, including but not limited to, amounts owed under this or any other Agreement between Consultant and City.

## **18. Mediation/ Trial without a jury**

Should any dispute arise between the parties to this Agreement concerning their respective obligations of either or the terms hereof, it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute

arising under the terms of this Agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. Any litigation arising under or as a result of this Agreement shall be tried to the court without a jury. Each party agrees to be responsible for payment of its own professional fees, including attorneys' fees in both mediation and litigation.

#### **19. Termination for Convenience**

The City may terminate all or part of this Agreement at any time for its own convenience by written notice to Consultant. Upon termination under this paragraph, Consultant shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier, plus Consultant's reasonable costs actually incurred in closing out the Agreement. Consultant is not entitled to special or consequential damages upon termination, including lost profits.

#### **20. Intellectual Property**

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Agreement shall vest in the City. Consultant shall execute any assignment or other documents necessary to effect this paragraph. Consultant may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Consultant shall transfer to the City any data or other tangible property generated by Consultant under this Agreement and necessary for the beneficial use of intellectual property covered by this paragraph.

#### **21. Payment for Labor or Material**

Consultant shall make payment promptly, as due, to all persons supplying to Consultant labor or material for the prosecution of the work provided for in this Agreement. (ORS 279B.220)

#### **22. Contributions to the Industrial Accident Fund**

Consultant shall pay all contributions or amounts due the Industrial Accident Fund from Consultant incurred in the performance of this Agreement and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 279B.220)

#### **23. Income Tax Withholding**

Consultant shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. (ORS279B.220)

#### **24. Payment of Claims by the City**

If Consultant fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Consultant or a subcontractor by any person in connection with this Agreement as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Consultant pursuant to this Agreement. The City's payment of a claim under this Paragraph

shall not relieve Consultant or Consultant's surety, if any, from responsibility for those claims.

**25. Hours of Labor**

Consultant shall pay employees for overtime work performed under the terms of this Agreement in accordance with ORS 653.010 to ORS 653.261 and the Fair labor standards Act of 1938. (29 USC §§ 201 *et. seq.*)

**26. Workers' Compensation**

Consultant is a subject employer that will comply with ORS 656.017. Consultant warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Consultant shall indemnify City for any liability incurred by City as a result of Consultant's breach of the warranty under this Paragraph. (ORS 279B.230)

**27. Medical Care for Employees**

Consultant shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of Consultant's employee(s), all sums which Consultant agrees to pay for such services and all monies and sums which Consultant collected or deducted from the wages of employees pursuant to any law or contract for the purpose of providing or paying for such service. (ORS 279B.230)

**28. Modification**

Any modification of the provisions of this Agreement shall be reduced to writing and signed by authorized agents of City and Consultant.

**29. No Waiver of Legal Rights**

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

**30. Integration**

This Agreement contains the entire agreement between City and Consultant and supersedes all prior written or oral discussions or agreements regarding the same subject.

**[SIGNATURES ON FOLLOWING PAGE]**

<p>City of Sandy, Oregon</p> <hr/> <p>Jennifer Coker, PE Public Works Director</p>	<p>Consultant</p> <hr/> <p>Larry Rupp, PE President/CEO</p>
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**City of Sandy, Oregon  
Sandercock Reservoir Repairs  
SCOPE OF WORK**

**PROJECT DESCRIPTION**

**City of Sandy** (“Owner”) has contracted with **Keller Associates, Inc.** (“Consultant”) to provide recommendations to repair a leaking pipe penetration in the existing Sandercock Reservoir. The Consultant’s scope of work has been developed based on the following project description. As the project moves forward, some of the information may change or be refined, and additional information will become known, resulting in the possible need to change, refine, or supplement the scope of work.

The Sandercock Reservoir was constructed in 1966. The Owner has indicated that no record drawings of the existing reservoir are available. The existing welded steel reservoir has experienced a leak at the tank floor penetration for the overflow riser pipe. The Owner has tried utilizing epoxy coating to minimize the leak. Additionally, the Owner indicated that the cathodic protection system has not been tested in recent years which could be contributing to corrosion at this pipe penetration. The Owner has requested Consultant recommend repairs to the existing reservoir that may include coating, cathodic protection, leak repairs, and repairs to structural components such as the ring wall foundation and the tank floor. Consultant’s services are limited to those services outlined in the following scope of work.

**SCOPE OF WORK**

**TASK 1: PROJECT MANAGEMENT**

*Consultant Responsibilities:*

- 1.1. General Project Management. Provide general project administration services including contract administration, project accounting, progress reports, scheduling, and internal project administration.
- 1.2. Site Visit. Participate in a site visit to observe reservoir. The site visit is to occur when the reservoir is empty to allow Consultant to get pictures of interior. Document existing condition of reservoir for use in developing recommended repairs as part of the technical memorandum.
- 1.3. Request for Information. Prepare initial request for information for data to be used in the design process. This is expected to be limited, as most information is assumed to have been received previously.

*Owner Responsibilities:*

- Provide access to the site and tank interior
- Respond to RFI in a timely manner

*Assumptions:*

- Project management budget assumes a project schedule of up to 4 months.

*Deliverables:*

- Monthly invoices and project update summaries.
- Site visit notes.
- Request for information.



## **TASK 2: RECOMMENDED TANK REPAIRS**

### *Consultant Responsibilities:*

- 2.1. Technical Memorandum. Review information collected during site visit. Document existing conditions and develop recommended repairs in a technical memorandum. It is assumed the technical memorandum will include recommendations for cathodic protection, coating repairs, areas of corrosion, observed leaks in the tank and pipe penetrations, and tank floor and ring wall structural foundation considerations. Develop a structural detail to repair the tank at the outflow pipe. Incorporate recommended repairs and structural detail in a technical memorandum.
- 2.2. Workshop Meeting. Meet with Owner (virtual meeting) to review the technical memorandum recommendations and select preferred improvements with Owner.
- 2.3. Design. Upon receiving Owner's approval on the technical memorandum, Consultant will develop a design package of the recommended maintenance repairs to allow Owner to solicit bids. Design budget assumes:
  - Specifications for coating and cathodic protection improvements
  - Design details including pipe penetrations, leak repairs, and recommended floor and foundation improvements.

### *Owner Responsibilities:*

- Review and provide one set of consolidated comments on the Draft Technical Memorandum.

### *Assumptions:*

- Surveying and geotechnical services will not be required.
- Permitting will not be required.
- Structural evaluation is limited to tank floor and ring wall. If a seismic resiliency evaluation is needed it can be included as an additional service.
- Consultant shall be entitled to rely, without liability or the need for independent verification, on the accuracy and completeness of the information provided by Owner, Owner's consultants and Contractors, information from public records, and information ordinarily or customarily furnished by others, including, but not limited to specialty Contractors, manufacturers, suppliers, and publishers of technical standards. This assumption applies to this task and subsequent tasks.

### *Deliverables:*

- Technical memorandum
- Design specification and details
- Agenda and meeting notes for workshop meeting.

## **TASK 3: SERVICES DURING BIDDING/CONSTRUCTION**

- 3.1. Bid Support. Attend and chair a pre-bid meeting. Respond to questions received from the Contractors during the bid period. It is assumed that the Owner will utilize specifications and design details to request quotes from Contractors and that a formal bidding process will not be needed.
- 3.2. Pre-Construction Meeting. A pre-construction conference will be chaired by the Consultant and attended and conducted by the Consultant, the Contractor, major suppliers, and subcontractors. The purpose of this meeting will be to establish lines of communication as well as procedures and timelines for the job.
- 3.3. Submittals. Review Contractor's submittals for general conformance to the specified materials and methods noted in the design plans and specifications. Reviews and approvals will not specify Contractor techniques, sequencing, procedures, means or methods of construction or to safety precautions. Scope includes responses to up to 8 submittals
- 3.4. RFIs and Change Orders. Respond to requests for information (RFI's) and Change Orders (CO's) from Contractor or Owner and provide necessary clarification of Contract Documents. Scope includes response to 4 RFI's and 2 CO's.

- 3.5. Construction Meetings. Attend two construction progress meetings with Owner and Contractor representatives. Meetings to be held during periods of active construction.
- 3.6. Site Visits. Consultant will visit the site up to four times during active construction. Site visits are assumed to be one (1) day of support from the Consultant.

**ADDITIONAL SERVICES (not included in scope of work)**

- Seismic resiliency evaluation and design, however can be added as an additional service upon Owner’s review of the technical memorandum.
- Record drawings are assumed to not be needed as repairs are generally maintenance items.
- Special use permits, environmental services, or additional permitting beyond those described in the scope of work
- Field investigations, including subsurface investigations, to check available record drawings

**SCHEDULE**

Consultant anticipates the following project schedule. The number of days associated with each of the tasks are approximate and assume timely delivery of requested information. Actual schedule may vary:

Task	Schedule	Comments
Task 2 – Recommended Tank Repairs (Technical Memorandum)	30 days	Technical memorandum will be submitted to Owner within 30 days from receiving Notice to Proceed from Owner.
Task 2 – Recommended Tanks Repairs (Design)	30 days	Design specifications and details will be submitted to Owner within 30 days from receiving Owner approval on technical memorandum.

**COMPENSATION**

As compensation for services to be performed by Consultant, the Owner will pay Consultant as described in the following table. The total authorized budget amount shall not be exceeded without written authorization from the Owner. Lump sum amounts shall include all costs for direct labor, indirect labor, overhead, reimbursable expenses, equipment, travel, per diem, and fixed fees.

Task	Type	Amount
Task 1 – Project Management	LS	\$6,390
Task 2 – Recommended Tank Repairs	LS	\$22,120
Task 3 – Services During Bidding/Construction	LS	\$ 15,380
<b>TOTAL COST</b>		<b>\$43,890</b>

LS = Lump Sum