

## INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is made and entered into this [REDACTED] day of September, 2023, by and between the City of Cordova (the "City") and [REDACTED] ("Contractor") (individually "Party" or collectively the "Parties"). The City desires to enter into an agreement with Contractor upon the terms and conditions set forth below, and Contractor desires to provide Professional Construction Services to the City upon the same terms set forth below. Therefore, in consideration of the covenants and agreements herein made, the Parties hereby agree as follows:

### 1. SERVICES

A. Contractor shall provide all labor, materials, and other work (the "Work") as necessary for the Bob Korn Memorial Swimming Pool Liner Replacement Project (the "Project"). The Project and Project Scope of Work are described in the Project Request for Proposals – RFP No. PR-23-04, attached as Exhibit A to this Agreement.

B. Changes to the scope of the services shall be made only in a writing executed by authorized representatives of both Parties. Contractor shall have the obligation to begin work in connection with any City-directed change immediately.

### 2. COMPENSATION

A. So long as Contractor's performance is in full accordance with the written requirements of this contract, the City shall pay Contractor for services provided a total amount not to exceed [REDACTED] Dollars (\$ [REDACTED]) (the "Agreement Sum").

B. Contractor shall invoice the City, Attn. Accts Payable, on a monthly basis not later than the 15th of each month, detailing the services performed pursuant to this Agreement in the preceding month. The City shall make payment by check to Contractor upon approval of such invoice within thirty (30) days of receipt, unless another payment method is agreed to between the Parties. Within ninety (90) days of completion of all of the Work, Contractor will submit a final bill to the City for final payment. Within one hundred twenty (120) days of completion of all Work, Contractor will submit all close-out documentation (such as as-builts, test results, and warranty information) to the City.

### 3. PERIOD OF PERFORMANCE

The time for performance of all Work (the "Period of Performance") shall be [REDACTED] days from delivery of notice to proceed with the start of the Work, delivered in writing by the City to the Contractor. The Period of Performance may be modified only by written agreement of the Parties.

#### **4. CHANGE ORDERS**

A. Any change in the Period of Performance, the Agreement Sum, or the scope of Work shall be accomplished only by change order signed by both Parties.

B. In the event of an excusable delay in the performance of the Work, Contractor shall be entitled to a modification of the Period of Performance. An excusable delay includes but is not limited to any delay in completion of the work on account of: fire, unusually severe weather, adverse governmental action, pandemic, quarantine restrictions, strikes, or acts of God. In no event shall the Contractor be entitled to a change in the Agreement Sum for costs incurred by reason of such delay.

#### **5. COVENANTS**

A. Contractor covenants that at all times during the terms of this Agreement, Contractor shall, in providing services pursuant to this agreement, provide such services in a manner that is consistent with all applicable federal and state laws and regulations, professional standards then prevailing, and currently accepted methods and practices, including codes of ethics of appropriate professional associations and applicable State Boards.

B. Contractor understands and agrees that they are an independent contractor. In no event shall this Agreement constitute an employment agreement, and Contractor shall be considered only as an independent contractor and not as an employee, agent, partner of, or joint venture with the City.

C. Contractor shall be solely responsible for any and all licensure or other fees necessary to perform the obligations under this contract, including such as may be required by the State of Alaska, any and all taxes (state, federal and/or local), worker's compensation insurance fully binding in the State of Alaska, disability payments, social security payments, or unemployment insurance payments. Contractor shall indemnify, defend and hold the City harmless from and against any claims for such fee, tax, payment or other such asserted obligation. Contractor shall provide the City with any and all licenses that are required by the State, Borough and or City within which work will be done.

#### **6. NON-EXCLUSIVITY**

The Contractor does not have the sole right to perform services of the type described in this contract. The City reserves the right to solicit and enter into contracts with other contractors for any service it deems necessary, including those of the type provided in this contract.

#### **7. CONTRACT ADMINISTRATION**

A. Performance of the Work under this contract shall be subject to the technical direction of the City Director of Parks and Recreation. Written notice of any kind required by or pursuant to this Agreement must be sent to the following:

Duncan Chisolm  
Director, Parks & Recreation  
City of Cordova  
P.O. Box 1210  
Cordova, AK 99574  
Direct: 907-424-6274  
Cell: 907-253-7284  
dchisolm@cityofcordova.net

## **8. HAZARDOUS MATERIALS/OTHER FEDERAL AND STATE LAW**

The Contractor hereby agrees to comply with all Federal, local, and state laws, codes, and regulations in connection with hazardous materials. The Contractor also agrees to fully comply with all state and Federal laws pertaining to environmental protection (including NEPA) and historic and artifact preservation.

## **9. NO SUBCONTRACT**

This Agreement is the means by which the City wishes to secure the personal, professional services of Contractor. The City is engaging the services of Contractor because of Contractor's particular and specialized knowledge, judgment, skill and expertise. Accordingly, the services to be performed by Contractor under this Agreement may only be performed by Contractor, and no other, except with the prior written consent of the City in its sole discretion.

## **10. TERMINATION OF AGREEMENT**

A. The City may terminate this Agreement, in whole or, from time to time, in part, for the City's convenience by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless notice directs otherwise), and (2) deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

B. Within thirty (30) days of the City's Notice of Termination of this Agreement for the convenience of the City, Contractor shall submit to the City a Termination Settlement Proposal itemizing all Work performed but not yet reimbursed as of the date of the termination. If the City concludes that the costs itemized in the Termination Settlement Proposal are either for (1) Work satisfactorily performed yet not reimbursed or (2) for costs reasonably related to the termination of the Work, the City shall make payment within thirty (30) days of receipt of the Termination Settlement Proposal. The Termination Settlement Proposal shall not include profit on Work not yet performed by Contractor as of the date of termination.

C. Prior to termination of this Agreement by the City due to failure of the Contractor to fulfill the contract obligations (default), the City will give seven (7) days

written notice and opportunity to cure the failure. If the Contractor fails to cure the default then the City may give written Notice of Termination of the Agreement. Following termination due to the Contractor's default, the City may complete the work by new contract or otherwise, and the Contractor shall be liable for any additional cost incurred by City in completing the work.

D. If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of the City.

E. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## **11. DISPUTES**

A. This Agreement shall be interpreted according to the laws of the State of Alaska. Any controversy or claim arising out of, or relating to this Agreement, or the breach, termination or validity thereof, shall be determined solely by the Superior Court for the State of Alaska, Third Judicial District at Anchorage.

## **12. INDEMNITY**

To the fullest extent of the law, the Contractor agrees to indemnify, defend and hold harmless the City, its representatives, employees, agents and assigns, from and against any and all claims, allegations, lawsuits, demands or causes of action (including but not limited to a claim for payment of attorney's fees) arising directly or indirectly from this Agreement or Contractor's performance hereunder, except in the event such claim is the result of the sole negligence or intentional misconduct of the City.

## **13. WAIVER OF LIABILITY AND LIMITATION OF DAMAGES**

CONTRACTOR AGREES THAT CITY SHALL NOT INCUR ANY LIABILITY OF ANY KIND WHATSOEVER, AND CONTRACTOR PROSPECTIVELY WAIVES AND RELEASES CITY FROM ANY CLAIM, LIABILITY, OR CAUSE OF ACTION WHATSOEVER, FOR ANY INJURY OR DAMAGE TO CONTRACTOR OF ANY KIND OR NATURE THAT RESULTS FROM OR OCCURS IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY CLAIMS ARISING OUT OF ANY FAILURE OR DAMAGE TO CONTRACTOR OR PERSONAL OR REAL PROPERTY, INJURY TO OR ILLNESS OR DEATH OF CONTRACTOR'S OFFICERS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, AGENTS, SERVANTS, EMPLOYEES, INVITEES OR VISITORS, AND ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION OF CITY WITH RESPECT TO THIS AGREEMENT; PROVIDED THAT CONTRACTOR IS NOT RELEASING CITY FROM LIABILITY FOR CLAIMS WHICH ARISE SOLELY OUT OF CITY'S RECKLESSNESS OR INTENTIONAL MISCONDUCT. UNDER NO CIRCUMSTANCES SHALL CITY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, EVEN IF CITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 14. INSURANCE

Contractor shall maintain the following insurance policies and name the City as an Additional Insured on each policy:

A. **Professional Liability Insurance** - If operations shall ever involve design, engineering, consulting or other professional services, Professional Liability Insurance with minimum limits of \$1,000,000 combined single limit.

B. **Commercial General Liability Insurance** with a minimum policy limit of \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate for bodily injury and property damage. The coverage shall include but not be limited to products/completed operations; premises and operations; blanket contractual; advertising/personal injury; independent contractors. Coverage shall be on an occurrence form.

C. **Workers' Compensation and Employer's Liability Insurance** in accordance with statutory requirements of the state of Alaska.

D. **Commercial Automobile Liability Insurance** for Contractor and its employees covering all owned, hired and non-owned vehicles in the minimum amount of \$500,000 combined single limit per occurrence.

## 15. MISCELLANEOUS

A. This Agreement contains the entire agreement of the Parties and supersedes any and all other agreements. It may not be changed orally but only by an agreement in writing signed by both Parties.

B. Paragraph headings used in this Agreement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Agreement.

C. Each person signing below is authorized to do so by the contracting Party they represent. Both Parties have had an opportunity to consult with their own independent counsel before signing this Agreement. Consequently, the rule of construction which requires interpretation against the drafter shall not apply to this Agreement.

D. If any term, covenant, or condition of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the remainder of this Agreement shall be construed without such provision and shall remain in full force and effect.

EXECUTED this \_\_\_\_\_ day of September, 2023.

CITY OF CORDOVA

\_\_\_\_\_  
By \_\_\_\_\_

Its \_\_\_\_\_

CONTRACTOR

\_\_\_\_\_  
By \_\_\_\_\_

Its \_\_\_\_\_