



CITY OF BEND

PERSONAL SERVICES AGREEMENT BETWEEN THE CITY OF BEND AND DOWNTOWN BEND BUSINESS ASSOCIATION

Agreement Number: 31800331

This Personal Services Agreement is between the City of Bend, Oregon ("City") and Downtown Bend Business Association ("DBBA") ("Contractor") for professional personal services.

RECITALS

- A. The City desires to enter into the Agreement for Bend Cares Program.
- B. Contractor has the training, ability, knowledge, and experience to provide the services desired by the City.
- C. Contractor selected by direct appointment.

TERMS OF AGREEMENT

1. **Effective Date; Duration.** This Agreement shall become effective when signed by both parties and approved by the City's legal counsel. Unless sooner terminated, this Agreement shall expire on June 30, 2019. Termination or expiration shall not extinguish or prejudice the City's right to enforce this Agreement with respect to any default or defect in performance that has not been cured.
2. **Services.** Contractor shall develop, implement and oversee the Bend Cares Program. The services to be provided are described in more detail in Exhibit A, Scope of Work. Contractor shall perform all work in accordance with Exhibit A.
3. **Consideration.** City shall pay Contractor a lump sum of \$10,000 from the Community Projects fund as seed funding for the Bend Cares campaign.
 - 3.1. Contractor shall send City an invoice setting forth the fee due. City shall review all submitted invoices promptly and shall pay all undisputed amounts within 30 days of City's receipt of the invoice.
 - 3.2. Invoices will be directed to the City of Bend, Attention: Accounts Payable, P.O. Box 1458, Bend, Oregon 97709. Invoices may be emailed to: ap@bendoregon.gov. If an invoice is delivered on a non-business day, the invoice shall be considered received on the next day the City's Finance Department is open for business.
 - 3.3. Contractor shall reference the Contract Number.

4. **Standard of Care.** Contractor will provide services with the degree of skill and diligence normally employed by professionals performing the same or similar services at the time the services are performed. Contractor shall, at all times during the term of this Agreement, be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work, be duly qualified and competent.

5. **Termination.** The parties may terminate this Agreement as follows:

5.1. This Agreement may be terminated at any time by mutual consent of both parties.

5.2. City may, at its sole discretion, terminate this Agreement, in whole or in part, upon thirty (30) days' notice, in writing and delivered by certified mail or in person.

5.3. City may terminate this Agreement, effective upon delivery of written notice to the Contractor, or at a later date established by the City under any of the following conditions:

(a) City funding is not obtained or continued at levels sufficient to pay for Contractor's Work. The Agreement may be modified to accommodate a reduction in funds. In determining the availability of funds, City may use the biennial budget adopted or modified by the City Council.

(b) If federal, state or City regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.

(c) If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

5.4. Any termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to the termination.

5.5. The City by written notice of default (including breach of contract) to the Contractor may terminate the whole or any part of this Agreement:

(a) If the Contractor fails to provide services called for by this Agreement within the time specified or any extension of the Agreement, or

(b) If the Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice

from the City, fails to correct the failures within 10 days or such longer period as the City may authorize.

- 5.6. Contractor may terminate this Agreement upon 30 days' written notice to City if City fails to pay Contractor pursuant to the terms of this Agreement and City fails to cure within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in the notice.

6. **Access to Records – Files; Confidential Information.** Contractor shall maintain all books, documents, papers and records relating to the Agreement for at least seven years following completion of the project. Contractor shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance. City, state and federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts and transcript. Contractor agrees that all files or other documents generated or in the possession of Contractor related to Contractor's delivery of service are the property of the City and shall be available to the City upon request. Contractor understands the nature of project/projects means that Contractor may be privy to information that is confidential, proprietary or sensitive in nature, which information shall not be disclosed to any third person or entity without the consent of the City of Bend or at the City's direction, either during the term of this Agreement or after its termination. Likewise, any analysis or commentary provided by Contractor of a confidential or sensitive nature shall not be released or disclosed to any person without the consent or direction of the City.

7. **Independent Contractor; Responsibility for Taxes & Withholding.**

- 7.1. The Work to be rendered under this Agreement is that of an Independent Contractor. Contractor is not an officer, employee, or agent of the State or Department as those terms are used in ORS 30.265 of the Oregon Tort Claims Act, and Contractor is not to be considered an officer, employee or agent of the City for any purpose. Contractor shall be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Agreement. Contractor is an independent Contractor for purposes of the Oregon Workers' Compensation Law (ORS Chapter 656) and is solely liable for workers' compensation coverage under this Agreement. City does not have the right of direction or control of the manner in which Contractor delivers the Work under this Agreement or exercise any control over the activities of the Contractor.
- 7.2. No Agency, Partnership or Joint Venture/Independent Contractor - Neither the City or Contractor, by virtue of this Agreement, is a partner or joint venture with the other party in connection with the activities carried out under this Agreement.

7.3. This Agreement is not intended to entitle the Contractor nor any of its Agents to any benefits generally granted to City employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Agreement are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement. Contractor shall be responsible for all federal or state taxes applicable to compensation or payment paid to Contractor under this Agreement.

8. **Ownership of Work Product.** All work product of Contractor under this Agreement shall be the exclusive property of the City. Contractor waives and releases all rights relating to the use of the work under this Agreement, including any rights arising under 17 U.S.C. § 106A. Reuse of work product by City or others for purposes outside the Scope of Work shall be without liability to Contractor.

9. **Indemnification.** Contractor shall defend, indemnify, and hold the City, its officers, agents, employees and volunteers harmless against all liability, claims, losses, demands, suits, fees and judgments (collectively known as 'claims') that may be based on, or arise out of damage or injury (including death) to persons or property caused by or resulting from any act or omission sustained in connection with the performance of this contract or by conditions created thereby or based upon violation of any statute, ordinance or regulation. This indemnification required shall not apply to claims caused by the sole negligence or willful misconduct of the City, its officers, agents, employees and volunteers. The Contractor agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

10. **Insurance.** Contractor shall purchase and maintain at their own expense the insurance noted below subject to review and acceptance by the City of Bend. All insurance shall apply on a primary, non-contributory basis and remain in effect for the duration of the contract terms. Any policy written on a 'claims made' basis may only be done so with the written approval and authorization of the City of Bend and coverage written in this manner shall extend for two years past completion and acceptance of Contractor's work or services.

10.1 Commercial General Liability Insurance with minimum coverage in effect of \$2,000,000 per incident, claim or occurrence and \$2,000,000 in aggregate. The policy shall include coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products completed operations, employer's practices liability and contractual damages. Contractor shall remain fully responsible and liable for any claims resulting from the negligence or intentional misconduct of contractor, its subcontractors, and their officials, agents and employees in performance of this contract, even if not covered by, or in excess of insurance limits.

- 10.2 Commercial Automobile (Fleet) Liability Insurance with minimum combined single limit of \$2,000,000 covering all owned, non-owned, and hired vehicles. This coverage shall be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability and Commercial General Liability.
- 10.3 Contractor shall maintain in full force and effect professional liability insurance with a combined single limit of not less than \$2,000,000 for each claim, incident or occurrence, \$2,000,000 aggregate. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Agreement. Contractor shall remain fully liable for any deductible required under its professional liability errors and omissions policy if found to be negligent related to the professional services to be provided under this Agreement. Coverage must be in effect prior to the commencement of the performance of this Agreement. Contractor shall furnish proof of continuous "tail" coverage for 24 months after Agreement completion.
- 10.4 Commercial General Liability coverage shall name, by certificate and endorsement the City, its officers, agents, employees and volunteers as additional insureds with respect to Contractor's work or services provided under this contract.
- 10.5 Workers' Compensation Insurance as required by ORS chapter 656 and meeting the minimum requirements therein. Contractor shall ensure that each subcontractor obtains and maintains workers' compensation insurance and that the carrier notifies the state of Oregon or files a guaranty contract with the state of Oregon Workers' Compensation Division before performing work.
- 10.6 Contractor shall provide proof of coverage required by acceptable Certificate of Insurance and signed Endorsement from the carrier(s). The Certificate and Endorsement shall provide that there will be no cancellation, termination, material change or reduction in limits of the insurance coverage without a minimum 30-day written notice to the City. The Certificate and Endorsement shall also state the deductible or self-insured retention level.

11. **Subrogation.** Contractor grants Waiver of Subrogation to the City, its officers, agents, employees and volunteers for any claims arising out of Contractor's work or service. Further, Contractor agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery by the Contractor shall be solely with their insurance carrier. Contractor also grants to City on behalf of any insurer providing coverage to either Contractor or City with respect to the work or services of contractor a waiver of any right to subrogation which any insurer or Contractor may acquire against City by virtue of the payment of any loss under such insurance coverage.

12. **Nondiscrimination - ADA Compliance** – Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Contractor also shall comply with the Americans with Disabilities Act (ADA) of 1990, as amended by the ADA Amendments Act (ADAAA) of 2008 and any subsequent amendments (42 U.S.C. § 12101, et seq.) (Pub No. 101-336), ORS 659A, and all regulations and administrative rules established pursuant to those laws. Contractor agrees to comply with ADA in its employment and nondiscrimination practices, and that it shall perform its contractual obligations consistent with ADA federal requirements/regulations, state disability and accessibility law and requirements, and applicable regulations and administrative rules established pursuant to those laws.

13. **Successors and Assigns.** City and Contractor each binds itself, its successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Contractor shall not assign or transfer its interests in this Agreement without written consent of City, which consent may be withheld in the City's sole, subjective discretion. The rights under this Agreement may not be transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. The City may rescind this Agreement if transferred or assigned by operation of law, change of control or merger, or without the prior written consent of the City.

14. **Force Majeure.** Contractor shall not be held responsible for delay or default caused by fire, riot, acts of God and war which is beyond Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Agreement.

15. **No Third Party Beneficiaries.** City and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

16. **Waiver.** City's failure to enforce a provision of this Agreement 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 this Agreement.

17. **Limitation on Authority.** City retains its authority to execute all applications, Agreements and other documents relating to the Project. Contractor has no right or authority, express or implied, to commit or otherwise obligate City or any of its partners, except as permitted by the express terms of this Agreement, or as authorized in writing.

18. **Attorney Fees & Governing Law.** In the event an action, suit or proceeding, including appeals, is brought for failure to observe any of the terms of this Agreement, each party shall be responsible for that party's own attorney fees, expenses, costs and disbursements for the action, suit, proceeding or appeal. The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any claim, action, suit, or proceeding between City and Contractor arising from or relating to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Contractor hereby consents to *in personam* jurisdiction of said courts.

19. **ORS 279A.125 Preference for Recycled Materials.** Contractor will use where applicable, recycled materials if (a) The recycled product is available; (b) The recycled product meets applicable standards; (c) The recycled product can be substituted for a comparable non-recycled product; and (d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent (5%).

20. **Compliance with Law.** Contractor shall comply with applicable federal, state, and local laws and ordinances applicable to the work under this Agreement. This Agreement incorporates the provisions required to be in an agreement of this type by ORS 279B.200 through 279B.235 (see Exhibit B).

21. **Merger Clause.** This Agreement and attached exhibits constitute the entire Agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. The waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor by signature of its authorized representative hereby acknowledges that he/she has read this Agreement/Agreement, understands it, and agrees to be bound by its terms and conditions.

22. **Notices.** All notices and demands of a legal nature that either party may be required or may desire to serve upon the other party shall be in writing and shall be served upon the other party by personal service, by facsimile transmission, E-Mail followed by mail delivery of the original of the notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

City of Bend, 710 NW Wall Street, Bend, Oregon 97703
Attn: Eric King, City Manager, Phone: 541-388-5505 & Fax: 541-385-6676
Email: eking@bendoregon.gov

Downtown Bend Business Association, PO Box 731, Bend, Oregon 97709
Attn: Mindy Aisling, Executive Director, Phone: 541-788-3628
Email: downtownbend@gmail.com

Service by mail shall be deemed complete on the date of actual delivery or three business days after being sent via certified mail. Service by facsimile transmission or E-Mail shall be deemed served upon receipt of the facsimile or E-Mail, followed by mail delivery.

23. **Severability.** If any provision of this Agreement is held illegal or unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions will not be impaired unless the illegal or unenforceable provision affects a significant right or responsibility, in which case the adversely affected party may request renegotiation of the agreement, and if negotiations fail, may terminate the agreement.

24. **Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

25. **Amendments.** The parties may amend this agreement by a written amendment properly executed by both parties.

26. **Compliance with Tax Laws.** Contractor represents and warrants that contractor has complied with the tax laws of this state and political subdivisions of this state including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318.


Contractor agrees to continue to comply with the tax laws of this state and political subdivisions of this state during the term of this contract. Failure of the contractor to comply with the tax laws of this state or a political subdivision of this state before the contractor executes the contract or during the term of the contract, shall be considered a default for which the City may terminate the contract and seek damages and other relief available under this contract or under applicable law.

CITY OF BEND, OREGON

Eric King, City Manager

Date

APPROVED AS TO FORM:



City Attorney's Office

4-27-16

Date

DOWNTOWN BEND BUSINESS ASSOCIATION

Title:

Date

EXHIBIT A
SCOPE OF SERVICES TO BE PROVIDED

Bend Cares Program

Bend Cares Program is an informational campaign to drive donors and their donations to organizations that best serve the specific needs of individuals in need. The program will encourage generous individuals to donate to organizations and programs that provide holistic and ongoing services throughout the community for individuals in need. Donors will be able to easily give using their smartphones. Information on housing, meals and other assistance will be provided to those in need.

This program is an informational campaign, the campaign includes the following elements

- Creation of Bend Cares brand
 - Logo designed and description created
- Bend Cares Website
 - URL www.bendcares.com purchased, 2/3 of website complete, the next stage is fill in placeholders with actual photos, descriptions and PayPal buttons for partnering organizations.
- Bend Cares Banners
 - Design created, vendor selected, the next stage is to fill in placeholders in the design template with actual photos and descriptions for partnering organizations.
- Bend Cares Posters
 - Design created, vendor selected, the next state is to fill in placeholders in the design template with actual photos and descriptions for partnering organizations.
- Bend Cares Social Media (Facebook)
 - Facebook page created (www.facebook.com/BendCares/). Next step is to schedule posts for the next 12 months (included in website contract)
- Bend Cares Flyers/Brochures
 - To be designed and printed

The Downtown Bend Business Association will provide monthly updates on the progress and success of the campaign.

Successful implementation of the project will be measured by the following:

1. Creation of the brand and proposed signs, banners, websites and brochures
2. A list of donation sites
3. A list of organizations receiving donations collected and the services that they provide
 - Those services must be intended for individuals in need or without adequate resources or homes.
4. A monthly donation total to each organization

EXHIBIT B
Relevant Provisions Of ORS Chapter 279B

279B.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

- (1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

279B.230 Condition concerning payment for medical care and providing workers' compensation.

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

279B.235 Condition concerning hours of labor.

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(2) An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

* * * * *

(5) (a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.