

## ATTACHMENT C

### CITY OF SCAPPOOSE

#### GOODS AND SERVICES CONTRACT For ON-CALL GENERATOR SERVICES

This Contract is by and between the City of Scappoose ("City") and \_\_\_\_\_  
("Contractor").

1. Term

Unless terminated sooner under the provisions of this Contract, the term of this Contract shall be from date of execution until August 1, 2027.

2. Scope of Services

The duties and responsibilities of the Contractor (hereinafter referred to as the "Services"), including a schedule of performance, shall be as described in **Exhibit A**, which is attached hereto and incorporated herein by reference. Any changes to the Agreement, including the Scope of Work in Exhibit A shall be in writing, signed by both parties, and shall be attached to and become a part of this Agreement.

3. Payments

City of Scappoose shall pay the Contractor, upon the submission of invoices, the prices stipulated in this Contract for supplies delivered and accepted or services rendered and accepted. City of Scappoose shall pay the Contractor within thirty (30) days of the receipt of a properly completed and submitted invoice. The Contractor may submit no more than one invoice per month.

Notwithstanding any other additional requirements of this Contract, invoices shall contain the contract number, the date(s) supplies were delivered or services were furnished; a detailed description of the supplies or services furnished, and a price breakdown showing contract prices and units. All invoices shall be submitted to City of Scappoose's Finance Department and Public Works Department as follows:

**Kathleen Head**

Finance Department

Email: [khead@scappoose.gov](mailto:khead@scappoose.gov)

Phone: 503.543.7146 ext. 223

**Dave Sukau**

Public Works Director

Email: [dsukau@scappoose.gov](mailto:dsukau@scappoose.gov)

Phone: 503.543.7146 ext. 801

Fax: 503.543.5679

Fax: N/A

Address: 33568 E Columbia Ave

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Scappoose, OR 97056

Scappoose, OR 97056

Failure to strictly comply with this provision may result in a delay in payment.

4. Type of Contract and Compensation

This is a requirements contract for the goods and services specified. The quantities of goods and services specified are estimates only and are not purchased by this Contract. City of Scappoose is not obligated to purchase goods of the type covered by this Contract exclusively from Contractor. Except as this Contract may otherwise provide, quantity variance between "estimated" and actual orders placed shall not constitute the basis for an equitable price adjustment.

**Contract compensation shall not exceed \$ \_\_\_\_\_ per annum. No individual project performed under this contract shall exceed \$50,000.**

5. Insurance

During the term of this Contract, Contractor shall purchase and maintain any insurance required by this Contract. Contractor shall furnish acceptable certificates of insurance and additional insured endorsements to City of Scappoose within ten (10) days after award of this contract, and prior to commencement of any contract work.

Contractor shall be responsible for the payment of all premiums and deductibles and shall indemnify City of Scappoose for any liability or damages that City of Scappoose may incur due to Contractor's failure to purchase or maintain any required insurance.

Contractor shall maintain insurance of the types and in the amounts described below. Contractor shall have the right to provide a self-insured retention for these coverages in an amount not-to-exceed \$2,000,000.00.

**1. Commercial General Liability Insurance**

Commercial General Liability insurance, with coverage limits not less than:

- i. \$2,000,000.00 per occurrence, bodily injury and property damage; and
- ii. \$3,000,000.00 general aggregate, bodily injury and property damage.

Such coverage will be equivalent to or better than the Insurance Service Office (ISO) standard coverages, conditions, and extensions, and shall not contain limitations or exclusions for Blanket Contractual, Broad Form Property Damage, Personal Injury, Premises-Operations, Products and-Completed Operations, Independent Contractors, Fire Legal Liability, and Explosion, Collapse, and Underground (XCU).

## **2. Business Auto Liability Insurance**

Automobile bodily injury and property damage liability insurance covering all motor vehicles, whether owned, non-owned, leased, or hired, with not less than the following limits:

- i. Bodily injury: \$1,000,000.00 per person; \$1,000,000.00 per accident; and
- ii. Property damage: \$1,000,000.00 per accident.

## **3. Worker's Compensation Insurance**

Oregon statutory workers' compensation and employer's liability coverage, including broad form all states protection, if applicable, voluntary compensation and Federal endorsement. Employer's liability coverage shall have the following limits:

- i. Bodily Injury by Accident: \$1,000,000.00 each accident
- ii. Bodily Injury by Disease \$1,000,000.00 each employee
- iii. Bodily Injury by Disease: \$1,000,000.00 policy limit

Contractors who are non-subject workers meeting one of the exceptions in ORS

656.027 may not be required to carry workers compensation insurance. Any Contractor requesting an exemption from the workers compensation coverage listed above must make that request in writing, stating the Contractor's qualification for exemption under ORS 656.027.

Failure of City to demand certificates of insurance, additional insured endorsements or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

The insurance required under this Paragraph shall:

- (1) Include (as evidenced by endorsement) City and its directors, officers, representative, agents, and employees as additional insureds with respect to work or operations connected with the contract (excluding Professional Liability and Worker's Compensation policies);
- (2) Require Contractor to give City not less than thirty (30) days written notice prior to termination, cancellation, or non-renewal of coverage;
- (3) Insurance policies shall be purchased only from insurance companies that meet City A.M. Best Rating criteria of "A-" or better (excluding SAIF) and are authorized to do insurance business in Oregon;
- (4) Contractor will cause its underwriters of insurance policies to waive their rights of subrogation arising from the work performed under this Contract.
- (5) Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.

**4. Indemnification**

- A. To the fullest extent permitted by law, Contractor agrees to fully indemnify, hold harmless, and defend City, its elected officials, officers, employees, and agents from and against all claims, demands, losses, suits, damages, losses, attorney fees, and costs of every kind and description and expenses incidental to the investigation and defense thereof, resulting from, based upon or arising out of, or incidental, or in any way connected with any act, omission, fault or negligence in whole or in part of Contractor, its agents, contractors, sub-contractors, or employees in the performance or nonperformance of Contractor's obligations under this Contract.

The obligations of Contractor under this provision will not in any way be affected or limited by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting this Contract. In no way shall the Contractor limit its liability under this Contract.

- B. This indemnity shall survive the termination of this Contract or final payment hereunder. This indemnity is in addition to any other rights or remedies which City and the other parties to be indemnified may have under the law or under this Contract. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may in its sole discretion reserve, retain or apply any monies due to the Contractor under the contract for the purpose of resolving such claims; provided, however, that City may release such funds if the Contractor provides City with adequate assurance of the protection of City's interests. City shall be the sole judge of whether such assurances are adequate.

**5. Termination for Convenience**

City may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in City's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. City of Scappoose will not be responsible for payment for any work performed after the time of termination. After termination, the Contractor shall promptly submit to City its termination claim for payment. If the Contractor has any property in its possession belonging to City, the Contractor will account for the same, and return it to City in the manner that City directs.

**6. Termination for Default**

- A. City may, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension; (ii) Make progress, so as to endanger performance of this contract; or (iii) Perform any of the other provisions of this contract.

- B. City's right to terminate this contract under subdivision (A) of this clause may only be exercised if the Contractor does not cure such failure within 10 calendar days (or more if authorized in writing by the Contract Administrator) after receipt of the notice from the Administrator specifying the failure.
- C. If City terminates this contract in whole or in part under the default provisions, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to City for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- D. Contractor shall be paid the contract price only for completed supplies or services delivered and accepted. If it is later determined by City that Contractor had an excusable reason for not performing, such as a strike, fire, flood, or other event that is not the fault of, or is beyond the control of, Contractor, City may allow Contractor to continue work, or may treat the termination as a termination for convenience.
- E. The rights and remedies of City in this Article are in addition to any other rights and remedies provided by law or under this Contract.

**7. Applicable Law and Jurisdiction**

This Contract shall be governed by Oregon law, without resort to any jurisdiction's conflicts of law principles, rules or doctrines. Any suit or action arising from this Contract shall be commenced and prosecuted in the courts of Columbia County, Oregon or the

U.S. District Court for the District of Oregon, in Portland, Oregon, as applicable. The parties agree to submit to the jurisdiction and venue of these courts.

**8. Waiver and Nonwaiver**

- A. A waiver by one party of a right to a remedy for breach of this Contract by the other party shall not be deemed to waive the right to a remedy for a subsequent breach by the other party. City's acceptance of goods or services, or payment under this Contract, shall not preclude City from recovering against Contractor or Contractor's surety for damages due to Contractor's failure to comply with this Contract.
- B. Both parties having had the opportunity to consult an attorney regarding the provisions of this Contract, the parties agree to waive the principle of contract interpretation that an ambiguity will be construed against the party that drafted the ambiguous provision.

**9. Mediation**

Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate

in good faith in a non-binding mediation process. The mediation shall take place in Scappoose, or St. Helens, Oregon. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. The mediator's fees and costs shall be borne equally by the parties.

**10. Severability/Survivability**

If any of the provisions contained in this Contract are held by a court of law or arbitrator to be illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired, and the parties shall negotiate an equitable adjustment of this Contract so that the purposes of this Contract are affected. All provisions concerning indemnity survive the termination or expiration of this Contract for any cause.

**11. Intellectual Property**

Contractor shall hold harmless, defend and indemnify City, its directors, officers, employees and agents from any loss of any kind, based on a claim that the work performed, or products provided hereunder, including material(s) or any part thereof, constitutes infringement of any patent, trademark, trade-name, copyright, trade secret, or other intellectual property infringement, including but not limited to claims arising out of the manufacture, sale or use of such work, products or materials. Such indemnification shall include all damages and costs incurred by City as the result of the claim, including attorney fees and expert witness fees.

**12. Inspection of Services**

City has the right to inspect and test all supplies/services called for under the contract, to the extent practicable, at all times and places during the term of the contract. City shall perform inspections and tests in a manner that will not unduly delay the work.

If any of the supplies or services do not conform with contract requirements, City may require the Contractor to replace the supplies or perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in supplies or services cannot be corrected by re-performance, City of Scappoose may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the supplies/services performed.

If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, City may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by City or (2) terminate the contract for default.

**13. Title and Risk of Loss**

If this Contract is for the supply of goods, Contractor shall bear the risk of loss until the goods have been delivered to the site designated by City and an authorized City employee or agent has taken possession of them. Title to goods shall pass to City upon City's payment for those goods. If this Contract is for the rental or lease of Contractor's goods, the Contractor shall bear the risk of loss to Contractor's goods. Contractor agrees to carry insurance to cover any such losses. Title to the Contractor's goods shall remain with Contractor while goods are in City's possession. If this Contract is for the repair or servicing of City of Scappoose owned goods, Contractor shall bear the risk of loss until the goods have been delivered to the site designated by City and an authorized City employee or agent has taken possession of them. Title to City owned goods shall remain with City while goods are in Contractor's possession. Contractor agrees to carry insurance to cover any losses/damages to City's goods while in Contractor's possession.

**14. Acceptance, Rejection, and Revocation of Acceptance**

If this Contract is for the supply of goods or equipment, then City shall be deemed to have accepted goods only after the goods have been delivered by Contractor, and City has had a reasonable opportunity after delivery to inspect the goods. Prior to acceptance, City may reject any goods that fail to conform to the requirements of this Contract. City may revoke its acceptance of goods that fail to conform to this Contract if the failure to conform was not reasonably discoverable by ordinary pre-acceptance inspection or evaluation. Acceptance may be revoked under this Paragraph even if City has started using the goods before discovering that they do not conform to the contract. Upon request by City, Contractor shall replace or repair to City's satisfaction any goods that have been rejected by City or the acceptance of which has been revoked by City under this Paragraph. Failure to replace or repair those goods within a reasonable time after City's request shall be a material breach of this Contract.

**15. Audit and Inspection of Records**

- A. Contractor shall maintain a complete set of records relating to this Contract in accordance with generally accepted accounting procedures. Contractor shall permit the authorized representatives of City, to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this Contract until the expiration of three (3) years after final payment under this Contract.
- B. Contractor further agrees to include in all of its subcontracts under this Contract a provision to the effect that the subcontractor agrees that City, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subcontractor.
- C. The periods of access and examination described in subparagraphs A and B of

this Section for records that relate to (1) disputes between City and Contractor, (2) litigation or settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

**16. Project Managers**

The Contractor's designated Project Manager shall be the Contractor's representative for the administration of the contract documents and the supervision of the work. In all matters relating to the performance of the work and payment therefore, and in all situations involving actual, recommended or, proposed changes, City shall accept commitments and instructions of the Contractor only from the Project Manager or a duly authorized representative of the Project Manager so designated in writing

City's Project Manager for this Contract is: **Dave Sukau** at (503) 543-8404 or **dsukau@scappoose.gov**

Contractor's Project Manager for this Contract is: **(name)** at **<phone>** or **<email address>**

**17. Notices and Communications**

All notices and other communications concerning this Contract shall be written in English and shall bear the contract number assigned by City. Notices and other communications may be delivered personally, by telegram, facsimile, or by regular, certified or registered mail.

A notice to City will be effective only if it is delivered to that person designated in writing in either a) the Notice of Award of this Contract, b) the Notice to Proceed under this Contract, or c) to another individual specifically designated by this Contract. A notice to the Contractor shall be effective if it is delivered to the individual who signed this Contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a corporation, to a general partner if Contractor is a partnership, or to another individual designated in writing by the Contractor in the contract or in a written notice to City.

**18. Contractor's Status and General Responsibilities**

Contractor is an independent Contractor for all purposes and is entitled to no compensation from City other than that provided by this Contract. Contractor shall inform City of Contractor's Federal Internal Revenue Service Employer Identification Number, or, if Contractor is an individual with no employer identification number, Contractor's Social Security Number. The Contractor and its officers, employees, and agents are not officers, employees or agents of City as those terms are used in ORS 30.265. The Contractor, its employees or officers shall not hold



themselves out either explicitly or implicitly as officers, employees or agents of City for any purpose whatsoever, nor are they authorized to do so.

Contractor shall provide and pay for all labor, materials, equipment, utilities, and other goods or services necessary for full contract performance unless this Contract specifically provides otherwise. Contractor shall supervise and direct contract performance using its best skill, and shall be responsible for selecting the means of contract performance. If, during or after the term of this Contract, Contractor learns of any actual or potential defect in the services provided under this Contract, of any problem associated with the results of contract performance, or of any nonconformance with a provision of this Contract or of Federal, state, or local law, Contractor shall inform City immediately in writing with a full description of the defect, problem, or nonconformance.

The Contractor must have obtained a letter of appointment issued by the Oregon State Police for placement on their non-preference towing list. If at any time the letter of appointment issued by the Oregon State Police expires, is suspended, revoked or made invalid for any other reason, the Contractor shall immediately notify the City. Such situation may result termination of the contract.

**19. Assignment and Sub-contracting**

Contractor shall not assign any of its rights or subcontract any of its responsibilities under this Contract without the prior written consent of City. Contractor shall include in each subcontract any provisions necessary to make all of the provisions of this Contract fully effective. Contractor shall provide all necessary plans, specifications, and instructions to its suppliers and subcontractors to enable them to properly perform their work.

**20. Prompt Payment**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from City. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of City.

**21. Liens Prohibited**

Contractor shall not permit any lien or claim to be filed or prosecuted against City, its property or its right-of-way on account of any labor or material furnished or any other reason for work arising out of this Contract. If any lien shall be filed, Contractor shall satisfy and discharge or cause such lien to be satisfied and discharged immediately at Contractor's sole expense.

**22. Nondiscrimination**

During the term of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, sexual orientation, disability or national origin.

**23. Hours of Labor – Goods and Services**

Pursuant to ORS 279B.020, ORS 279B.235, and ORS 279C.520 the Contractor shall pay employees for overtime work performed under this contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

**24. Warranty**

Notwithstanding any express warranties provided elsewhere in this contract, the implied warranties of merchantability and of fitness for a particular purpose shall not be deemed to be excluded or modified, and contractor may not exclude or modify them. Contractor warrants that all goods provided under this contract are new, of high quality, and free from defects in design or manufacture. Goods provided under this contract shall be covered by any additional warranty customarily provided by Contractor or by the manufacturer of the goods.

**25. Compliance with Laws and Regulations**

Contractor shall adhere to all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Contract. The Contractor shall comply with the clauses required in every public contract entered into in the State of Oregon as set forth in ORS 279B.220, 279B.225, 279B.230, 279B.235, 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are hereby incorporated by reference.

Contractor acknowledges that the Oregon Government Standards and Practices laws ("Ethics Laws"), as set forth in ORS 244.010 et seq. are applicable to contractors when performing certain work on behalf of City under contract and that the individual employees and agents of Contractor may be treated as public officials under ORS 244.020 (14). Contractor agrees to determine whether and under what circumstances it or its agents are subject to the Ethics Laws, as referenced herein and incorporated by reference, and shall comply and ensure compliance by those subject to Contractor's control when performing work under this Contract.

**26. Prohibited Interests**

No City Council member, officer, employee or agent (or any member of the immediate family or the partner of any of the aforementioned) shall have any direct or indirect interest in this contract or its proceeds during, or within one year after, that person's tenure with City, except to the extent such interest is permitted and disclosed as may be required under applicable law and City policy.

No City Council member, officer, employee, or agent (or any member of the immediate family or the partner of any of the aforementioned) shall solicit or accept, and Contractor shall not offer or give to any City Council member, officer, employee or agent (or any member of the

immediate family or the partner of any of the aforementioned), any gratuities, favors, or anything of monetary value, in connection with the administration of this Contract, except to the extent permitted by applicable law and City policy.

No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

**29. Safety**

Notwithstanding any safety provisions elsewhere in this contract, and in addition to Contractor's own safety procedures, Contractor shall implement and enforce all safety requirements that are standard in the industry and/or that are required by City's Safety Department.

**30. Time of Essence**

Time is of the essence in this contract. Contractor's failure to deliver goods/services on time shall be a material breach of this contract. If Contractor fails to deliver goods/services on time, City, at its discretion, may procure those goods/services from another source. If the price paid by City for goods/services procured from another source under this Paragraph is higher than the price under this contract, Contractor shall pay City the difference between those prices. City may deduct that difference from any amount City owes Contractor.

**31. Paragraph Headings and Other Titles**

The parties agree that paragraph headings and other titles used in this Contract are for convenience only and are not to be used to interpret this Contract.

**32. Integration, Modification, and Administrative Changes**

This Contract includes the entire agreement of the parties and supersedes any prior discussions or agreements regarding the same subject. This Contract may be modified in writing by a modification that has been signed by individuals authorized to bind each of the parties contractually. City reserves the right to make administrative changes to the contract unilaterally. An administrative change means a written contract change that does not affect the substantive rights of the parties.

**33. Authority**

The representatives signing on behalf of the parties certify that they are duly authorized by the party for whom they sign to make this Contract.

**34. Certificate of Oregon Tax Law Compliance**

By signature hereto, both parties agree to this Contract as written. Contractor affirms, under penalty of perjury as provided in ORS 305.385(6), that to the best of its knowledge it is not in

violation of any Oregon Tax Laws set forth at ORS Chapters 118, 314, 316-18, 321 and 323 and the elderly rental assistance program under ORS 310.630-310.706; under ORS 320.005-320.150; under ORS 403.200–403.250 and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

**<PROVIDER NAME>**

**CITY OF SCAPPOOSE**

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_

Name: Benjamin Burgener

Title: \_\_\_\_\_

Title: City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Federal Employer ID Number