

City OF PHOENIX
PHOENIX, OREGON
RESOLUTION NO. 958

RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT FOR THE BACKFLOW TESTING CONTRACT.

WHEREAS, the City of Phoenix has an interest in improving its water system; and

WHEREAS, by hiring a contractor to test the backflow systems will insure the water system is stable; and

WHEREAS, it is cost effective to hire someone to test the backflow systems; and

NOW, THEREFORE, THE CITY OF PHOENIX RESOLVES AS FOLLOWS A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE BACKFLOW TESTING CONTRACT.

PASSED AND APPROVED by the City Council of the City of Phoenix and signed in authentication thereof at a regular meeting on the 18 day of April, 2016

Jeff Bellan, Mayor



Janette Boothe

CITY OF PHOENIX SERVICES CONTRACT

This agreement is made and entered into this ____ day of April ____, 2016, between the City of Phoenix ("City"), an Oregon municipal corporation, and Scott Bradley Backflow Landscape Irrigation Services, ("Contractor"), a sole proprietorship.

RECITALS

1. The City desires to enter into this Agreement for backflow testing and maintenance services.
2. Contractor possesses the training, ability, financial resources, knowledge and experience to provide the services desired by the City.

AGREEMENT

1. **Effective date; Duration.** This Agreement shall become effective on April ____, 2016, and, unless sooner terminated, shall expire two years after its effective date. Termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default of defect in performance that has not been cured.
2. **Services.** Except as specifically provided herein, Contractor shall perform all work in accordance with the "Contract Documents," attached hereto as Exhibits A and B, which are incorporated herein.
3. **Independent contractor; responsibility for taxes and withholding.** Contractor shall perform the work required by this contract as an independent contractor. Although City reserves the right to determine and modify the delivery schedule for the work to be performed and to evaluate the quality of services, the City cannot control the means of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.

Contractor represents and warrants that it is not an employee of the City, is not currently employed by the Federal Government and meets the specific independent contractor standards of state law.

Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this contract, and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amounts to cover Contractor's federal or state tax obligations. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this contract, except as a self-employed individual.

4. Non-appropriations clause. City has sufficient funds currently available and authorized for expenditure to finance the costs of this contract with City's fiscal year budget. Contractor understands and agrees that the City's payment of amounts under this contract attributable to work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable discretion, to continue to make payments under this contract.

5. Insurance. Contractor shall maintain in effect for the duration of this contract, or any other time periods required herein, liability coverage in the amount of \$1,000,000. Workers' Compensation insurance: All employers, including Contractor, that employ subject workers who work under this Contract in the City shall comply with state law and provide the required Oregon workers' compensation coverage, unless such employers are exempt under state law. Contractor shall ensure that each of its Sub-Contractors and subcontractors complies with these requirements.

Contractor shall also maintain automobile liability insurance with a combined single limit, or the equivalent, of not less than the Minimum amounts required by the Oregon Financial Responsibility Law.

6. Modification, amendment and waiver. This contract constitutes the entire agreement between the parties on the subject matters addressed herein. The terms of this contract cannot be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties and containing all required city approvals. Any such waiver, alteration, modification, supplementation or amendment shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, regarding this contract except as contained, incorporated or referenced herein.

7. Execution in counterparts. This contract, and any amendments to it, may be executed in counterparts (each of which shall be an original and all of which shall constitute but one and the same instrument) or in multiple originals. A faxed or emailed form of this contract or any amendment thereto, executed by one or more of the parties, will constitute a counterpart hereof, as long as the counterpart bearing the party's original signature is promptly transmitted to the other party and received by that party forthwith.

8. Governing Law; Jurisdiction; Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between City and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then

it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this "Governing Law; Jurisdiction; Venue" section be construed as a waiver by the City of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. The parties consent to the jurisdiction of the courts in Oregon.

9. Successors & Assignments. The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Contract is executed, Contractor shall not enter into any Sub-Contractor agreements for any of the Services or assign or transfer any of its interest in this Contract, without the prior written consent of City.

10. Compliance with Applicable Law. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Services. City's performance under this Contract is conditioned upon Contractor, the Sub-Contractors, if any, and all employers providing Services, labor or materials under this Contract are subject employers under the Oregon workers' compensation law. All provisions applicable to services contracts under ORS Chapter 279 are incorporated herein. All provisions of Oregon Administrative Rules applicable to backflow testing and maintenance are incorporated herein.

11. Severability. The Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

12. Force Majeure. Neither party shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to fire, riot, acts of God, terrorist acts or war where such cause was beyond such party's reasonable control. Each party 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 Contract.

13. Third Party Beneficiaries. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against City or Contractor. Contractor's Services under this Contract shall be performed solely for City's benefit and no other entity or person shall have any claim against Contractor because of this Contract for the performance or nonperformance of Services hereunder.

14. Termination without cause. This Contract may be terminated at any time, in whole or in part by City with thirty days advanced written notice to Contractor.

15. Termination for cause. City may terminate this Contract immediately, in upon written notice to, or such later date as City may establish in such notice, upon the occurrence of any of the following events: City lacks lawful funding, appropriations, limitations or other expenditure authority at levels sufficient to allow City, in the exercise of its reasonable discretion, to pay for Contractor's Services; Federal, state or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under this Contract are prohibited or City is prohibited from paying for such Services from the planned funding source; Contractor no longer holds all licenses or certificates that are required to perform the Services; or Contractor fails to provide Services within the times specified or allowed under this Contract, fails to perform any of the provisions of this Contract, or so fails to perform the Services as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from City, does not correct such failures within the time that City specifies (which shall not be less than 10 calendar days, except in the case of emergency).

IN WITNESS WHEREOF, THE PARTIES OR THEIR DULY AUTHORIZED REPRESENTATIVES HAVE SIGNED THIS AGREEMENT:

CONTRACTOR

CITY OF PHOENIX

Date: _____

Mayor

Date: _____

City Manager

Approved as to form:

City Attorney

EXHIBIT A

(THIS PAGE IS INTENTIONALLY LEFT BLANK. THE REQUEST FOR BID MATERIALS ARE ATTACHED HERETO ON THE FOLLOWING PAGES)