



Agenda for the Regular Meeting of the City Council

Wednesday, March 20, 2024, 5:15 PM

Location: DALTON GARDENS CITY HALL, 6360 N 4th St., Dalton Gardens, ID

Meeting is conducted in person and via Zoom:

<https://us02web.zoom.us/j/83021315118?pwd=dEpZSkV6WFFWZ0VJMEtEa2Exb0hVZz09>

Webinar ID: 830 2131 5118; **Passcode:** 668533

1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE

4. CITY BUSINESS

- a. Consideration for Mayor to contract out Human Resources- **ACTION**
- b. Consideration of McArthur Engineering Contract- **ACTION**
- c. Consideration of Consulting Agreement with Candace Baker- **ACTION**
- d. Consideration of suspending all travel, training, and seminars for FY24 unless approved by Mayor and City Council- **ACTION**
- e. Discussion of procurement process and purchase approval by Mayor and City Council

5. ADJOURNMENT- ACTION

Original Posting: 3/14/2024: The purpose of this Agenda is to assist the Council and interested citizens in the conduct of the public meeting. Careful review of the Agenda is encouraged. Testimony from the public will be solicited for any item or issue listed under the category of Public Hearings. Any individual who wishes to address the Council on any other subject should plan to speak when Item: Public Comments is identified by the Mayor. The Mayor and Council will not normally allow audience participation at any other time. Please, no repetitive or abusive comments. Workshops are for Council Members discussion only on a topic, no action or decisions occur at that time. No Public Comment is taken during Workshops. Assistance for persons with disabilities will be provided upon 24-hour notice prior to the meeting by calling the City Clerk at (208) 772-3698 ext 102.

CITY OF DALTON GARDENS GENERAL ENGINEERING SERVICES



McArthur Engineering Scope of Service

Summary: This Scope of Services was prepared at the request of Mayor Curt Jernigan, and the City of Dalton Gardens, Idaho (City) for General Engineering Services. Future projects, and or specific engineering services, may be subject to specific tasks and budget estimates that shall be provided at the time of the service request.

Task 1: General Engineering Services:

The following hourly service rates are being presented for engineering services:

- **Principal Engineer Representation** **\$155 / hour**
- **Professional Engineer Representation** **\$140 / hour**
- **Engineer-Intern Representation** **\$115 / hour**
- **Construction Inspection Services** **\$100 / hour**
- **Engineer Drafting Services** **\$75 / hour**
- **Clerical Services** **\$55 / hour**

Notes:

1. By signing this Scope of Service, the City agrees to provide McArthur Engineering with authorization to perform the general engineering services as a City representative, for requested engineering or inspection services.
2. This scope is limited to the attached McArthur Engineering General Conditions, and it does not include 3rd party agency fees, (submittal, review, etc.), surveying services of any kind, geotechnical engineering services of any kind, structural engineering services of any kind, biological studies or assessments, transportation studies, construction or service bonding of any kind, legal services or fees of any kind, or any service not specifically defined in this scope.
3. McArthur Engineering cannot assume liability for 3rd Party Services, but McArthur Engineering is willing to use our relationships to secure professional 3rd party geotechnical engineering, structural engineering, and or survey services as needed for the City to complete projects or engineering services in a professional manner.
4. Invoices will be emailed to the Client, unless otherwise specified or requested by the City.

GENERAL CONDITIONS

1. **Parties:** **McArthur Engineering Company, LLC** (further *ME*) is hereafter referred to as *ME or Consultant*, and (printed name):

_____ is/are hereafter referred to as *City or Client*.

2. **Contract:** This document is hereby referred to as *Contract* for the above referenced services.

This *Contract* shall be binding upon the heirs, executors, administrators, successors and assigns of *Client* and *Consultant*.

This *Contract* shall not be assigned by either *Client* or the *Consultant* without the prior written consent of both parties.

This *Contract* contains the entire Contract between *Client* and *Consultant* relating to the project and the provision of services to the project. Any prior contracts, promises, negotiations or representations not expressly set forth in this Contract are of no force or effect. This *Contract* supersedes any previous *Contract* for this project. Any said previous *Contract* is now null and void. Any modifications to this *Contract* shall be finalized in writing, and signed by both *Client* and *Consultant* to be considered fully executed.

This *Contract* shall be governed by and constructed in accordance with the laws of the State of Idaho.

Initials _____

3. **Contract Type:** This is an hourly service agreement for the services noted. Services outside of the above may require additional fees.
4. **Exclusions:** See the above exclusions noted in this Scope of Service.
5. **Outstanding Balance:** Any invoices not paid within 30 calendar days of their due date will be subject to interest in the amount of 1.5% per month applied to all unpaid portions of said invoice. A cost of living increase of 5% shall be applied annually to any remaining unpaid balance.
6. **Client's Contractor:** *Client* agrees that *Consultant* is an observer of construction methodology and compliance of plan specifications only. *Consultant* has no authority over *Client's* contractor and is not responsible in any manner for *Client's* selected contractor performance.
7. **Terms, Conditions, etc.:** *Consultant's* waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant. If any term, condition, or covenant of this *Contract* is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this *Contract* shall be valid and binding on *Client* and *Consultant*.
8. **Representation:** *Consultant* shall only act as an advisor in all governmental relations, but hereby agrees to appear on behalf of the *Client* to achieve approvals without accepting any liability by said representation.
9. **Proprietary Documents and Data:** All original papers, documents, drawings, electronic data, calculations, and other work product of *Consultant* and copies thereof, produced by *Consultant* pursuant to this *Contract*, except documents which are required to be filed with public agencies, shall remain the property of *Consultant* and may be used by *Consultant* without the consent of *Client*. *Client* agrees not to use or permit any other person to use plans, drawings, or other work product prepared by *Consultant*, which plans, drawings, or other work product are not final and which are not signed, and stamped or sealed by *Consultant* and approved by all appropriate public agencies. *Client* agrees to be liable and responsible for any such use of non-final plans, drawings, or other work product not signed and stamped or sealed by *Consultant* and approved by appropriate public agency and waives liability against *Consultant* for their use. *Client* further agrees that final plans, drawings, or other work product are for the exclusive use of the *Client*, and may be used only for the project described on the face thereof. Such final plans, drawings, or other work product may not be changed nor used on a different project without the expressed written authorization or approval by the *Consultant*.
10. **Default:** *Client* acknowledges that its right to utilize the services and work product provided pursuant to this *Contract* will continue only so long as *Client* is not in default pursuant to the terms and conditions of this *Contract*, and *Client* has performed all obligations under this *Contract*. *Client* further acknowledges that *Consultant* has the unrestricted right to use the services provided pursuant to this *Contract* as well as all work products provided pursuant to this *Contract*.
11. **Cooperation:** *Client* and *Consultant* agree to cooperate with each other in every way throughout the entirety of the project.
12. **Termination of Services:** The initial term of this *Contract* shall be from the commencement date hereof through September 30, 2024. After the initial term, this *Contract* shall be deemed renewed automatically for the term of October 1 through September 30 unless the City or *ME* gives thirty (30) days written notice of its intent to not renew the *Contract*. Either party may terminate this *Contract* by providing thirty written notice to the other party. In the event this *Contract* is terminated before the completion of all services, unless *Consultant* is responsible for such early termination, *Client* agrees to release *Consultant* from all liability for all work performed after the date of termination. *Client* shall pay *Consultant* all amounts owed within thirty (30) days of termination.
13. **Bankruptcy:** *Consultant* shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations pursuant to this *Contract* if *Client* files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary Bankruptcy petition filed against *Client* in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to the provisions of this paragraph shall continue until such time as this *Contract* has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with the final order or judgment of the Bankruptcy Court.
14. **Liens:** This *Contract* shall not be construed to alter, affect, or waive any lien or stop notice right, which *Consultant* may have for the performance of services pursuant to this *Contract*. *Client* agrees to separately provide *Consultant* with the name and address of any and all lenders who would loan money on the project and who are entitled to receive a preliminary notice.
15. **Third Party Payments:** If payment for *Consultant's* services is to be made on behalf of *Client* by a third-party lender, *Client* agrees that *Consultant* shall not be required to indemnify the third-party lender, in the form of an endorsement or otherwise, as a condition of receiving payment or services.
16. **Payment for Services Rendered:** In the event all or any portion of the work prepared or partially prepared by *Consultant* be suspended, abandoned, or terminated, *Client* shall pay *Consultant* for all fees, charges, and services provided for the project, not to exceed any *Contract* limit specified herein. *Client* acknowledges if the project work is suspended and restarts, there will be additional charges due to suspension of the work, which shall be paid for by *Client* as extra work.
17. **Project Delay's:** *Consultant* is not responsible for delay caused by activities or factors beyond *Consultant's* reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns, or stoppages, accidents, acts of God, failure of *Client* to furnish timely information or approve or disapprove *Consultant's* work promptly, lack of performance by *Client*, Contractors, or governmental agencies.
18. **Governmental Actions:** *Consultant* shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexation or consolidations, use or conditional use permits, project or plan approvals, and building permits.

Initials _____

19. **Estimated Quantities:** *Consultant* makes no representation concerning the estimated quantities and cost figures made in connection with maps, plans, specifications, or drawings other than that all such figures are estimates only and *Consultant* shall not be responsible for fluctuations in cost factors. *Consultant* assumes no liability for the accuracy of provided estimate. The Client's contractor shall be responsible for verifying final construction quantities unless otherwise required by permitting/governing agencies.
20. **Third Party Performance:** *Client* acknowledges that *Consultant* is not responsible for the performance of work by third parties including, but not limited to, any governmental agency, permitting agency, soils engineers, landscape architects, land planners, the construction Contractor and its subcontractors, etc.
21. **Project Schedule:** It is a material inducement to all parties hereto that all parties perform their obligations in a timely manner and in a manner consistent with all applicable industry standards. In the event of a failure of that condition, the affected party may give the other party written notice of a claimed default. In the event a claimed default, as properly noticed by the party alleging said default, is not cured within thirty (30) days, or in the event the parties do not reach a written *Contract* to waive or otherwise resolve said claimed default, then the non-defaulting party may, at its election, declare this *Contract* terminated. All rights under this paragraph shall be exercised in good faith.
22. **Risk Allocation:** The *Client* is aware of the risks, rewards, and benefits of the Project and *ME* total fee for services. The risks are hereby allocated such that the *Client* agrees that, to the fullest extent permitted by law, the total combined liability of *ME*, its agents, employees, and insurers, to the *Client*, directly or through third parties for all injuries, claims, expenses, costs and fees, damage or claims of expenses arising out of this agreement from any cause, shall not exceed the amount of *ME*'s fees, as of the date of this agreement. Such causes include, but are not limited to, *ME*'s negligence, errors, omissions, strict liability, and breach of this agreement. In no event shall *ME* be liable for any incidental, indirect or consequential damages.

The client agrees that *ME* is not responsible for damages arising directly or indirectly from any delays for causes beyond *ME*'s control. For purposes of this agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or any other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency or other third party to act in a timely manner; failure substance or differing site conditions. In addition, if the delays resulting from any such causes increase the cost or time required by *ME* to perform its services in an orderly and efficient manner, *ME* shall be entitled to an equitable adjustment in schedule and compensation.

23. **Hazardous Waste and Asbestos:** The *Client* agrees, notwithstanding any other provision of this agreement, to the fullest extent permitted by law, to indemnify and hold harmless *ME*, it's officers, partners, employees and consultants (collectively, *ME*) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of *ME*.
24. **Right of Entry:** The *Client* shall provide for *ME* right to enter the property owned by the *Client* and others in order for *ME* to fulfill the services to be performed hereunder. The *Client* understands that use of testing or other equipment may avoidably cause some damage, the correction of which is not part of this agreement. The *Client* agrees, to the fullest extent permitted by law, to indemnify and hold harmless *ME*, it's officers, directors, employees and sub-consultants (collectively *ME*) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising or allegedly arising from procedures associated with testing or investigative activities or connected in any way with the discovery of hazardous materials or suspected hazardous material on the property.
25. **Mediation before Litigation:** In an effort to resolve any conflicts that arise during the design and construction of the project or following the completion of the project, the *Client* and *ME* shall agree that all disputes between them arising out of or relating to this agreement or the project, except for the payment of *ME*'s fees, shall be submitted to nonbinding mediation as a condition precedent to litigation unless the parties mutually agree otherwise. The *Client* further agrees to include a similar mediation provision in all agreements with independent contractors and consultants on the project, and also to include a similar mediation provision in all agreements with their subcontractors, sub-consultants, suppliers and fabricators on the project, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.
26. **Legal Fees:** In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs and expenses including attorneys' fees as may be set by a court / mediator / arbitrator.
27. **Survival:** Notwithstanding completion or termination of this agreement for any reason, all rights, duties, and obligations of the parties to this agreement shall survive such completion or termination and remain in full forces and effect until fulfilled.
28. **Controlling Law, Jurisdiction, and Venue:** This agreement is to be governed by the law of the State of Idaho, principal place of business of *ME*. Any action or proceeding arising from or in connection with this agreement shall subject exclusive jurisdiction of the State of Idaho. Venue shall be proper in Kootenai County.

Initials _____

NOTICE TO PROCEED

I, _____
 (printed Client name), known as the **Client** for this project, do hereby declare that I accept this Contract for the services listed, at the estimated budget provided, and per the aforementioned General Contract Conditions. Consider this signature below as my **Notice to Proceed:**

(Client's signature)

(Client's company) *(Client's title)*

(Date)

McArthur Engineering Company, LLC:

Scott McArthur **PE**
(Printed name) *(title)*

(Signature)

(Date)

BILLING INFORMATION

Client Phone Number: _____

Billing Email Address: _____

Billing Street Address: _____
Street Address City State Zip

Initials _____

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT is effective as of the ____ day of _____, 2024, by and between the City of Dalton Gardens, a municipal corporation of the State of Idaho (“City”) and Candy Baker (“Baker”).

RECITALS:

WHEREAS, Baker previously served as a Deputy City Clerk for the City until her resignation;

WHEREAS, before the Mayor recommends to City Council to fill the vacancy created by Baker’s resignation position he desires to assess workflow and staff needs;

WHEREAS, the City wishes to employ Baker as an independent contractor to assist the Mayor as needed; and

WHEREAS, Baker is willing to serve as an independent contractor.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, the parties agree as follows:

- 1. Engagement.** City hereby engages Baker and Baker hereby accepts such engagement as an independent contractor, under the terms and conditions herein set forth.
- 2. Term.** The term of this Agreement shall commence _____, 2024, and shall continue until terminated.
- 3. Services To Be Rendered.** Baker is engaged as an administrative assistant to provide such services to the City as requested by the Mayor.
- 4. Compensation.** City shall pay Baker the sum of Forty Dollars (\$40.00) per every hour worked. The first payment shall be due and payable on or before the ____ day of _____, 2024 and the payment for each succeeding month of the term shall be payable on or before the ____ day of such month.
- 5. Equipment Facilities and Expenses.** It is the parties’ understanding that the City will provide and maintain office space for Baker and supply her with the supplies and tools necessary for Baker’s performance of his duties under this Agreement.
- 6. Termination by Parties.** Either party may terminate this Agreement by giving thirty (30) days’ written notice to the other party.
- 7. Termination by Death.** In the event of Baker’s death during the term of this Agreement, this Agreement shall not survive death.
- 8. Accounting.** All files and other records generated by Baker during the term of this Agreement shall belong to and remain the property of the City, including upon termination of this Agreement.

9. **Disclosure of Information.** Upon termination of this Agreement, Baker hereby agrees that she will not disclose any confidential information as to any transactions which have been consummated or are pending upon such termination.

10. **Relationship Between Parties.** Baker is retained and engaged by the City only for the purpose and to the extent as set forth in this Agreement. Baker's relation to the City shall, during the period of his engagement and services hereunder, be that of an independent contractor. Baker shall not be considered, under the provisions of this Agreement, or otherwise, as having an employee status or as being entitled to participate in any benefit plans offered by the City pertaining to or in connection with any pension, savings, or insurance benefit which the City now or in the future provides to its employees.

11. **Taxes.** Baker shall be responsible for payment of her own income taxes and self-employment taxes as the same may be required under the provisions of the Internal Revenue Code of 1986, as amended.

12. **Attorney's Fees.** If a suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sums as the court may adjudge reasonable as attorney's fees, whether in initial litigation or upon appeal.

13. **Binding Effect.** This Agreement shall extend to and be binding upon the City upon approval by the City Council.

14. **Governing Law.** The provisions of this Agreement shall be governed by and interpreted in accordance with the laws of the state of Idaho.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the date first set forth above.

CITY OF DALTON GARDENS

BY: _____
CURT JERNIGAN
Mayor

ATTEST:

Teresa Janzen, City Clerk

CANDACE BAKER