

RESOLUTION NO. 1467

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
DAYTON, WASHINGTON, AUTHORIZING A PROFESSIONAL
SERVICES CONTRACT BETWEEN THE CITY OF DAYTON AND
BLUE MOUNTAIN ACTION COUNCIL**

WHEREAS, on March 10, 2021, the Dayton City Council authorized Ordinance No. 1976, creating Chapter 4-9 DMC, Utility Rate Reduction Discount Program for eligible low-income senior citizens and disabled residential utility customers; and

WHEREAS, the City Council desires contracting with a third-party service provider to determine eligibility of residential utility customers;

WHEREAS, Blue Mountain Action Council, a private, non-profit community action agency serving Columbia County, has offered to provide third-party low-income residential utility customers eligibility services as prescribed by Chapter 4-9 of the Dayton Municipal Code.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON, DOES
HEREBY RESOLVE AS FOLLOWS:**

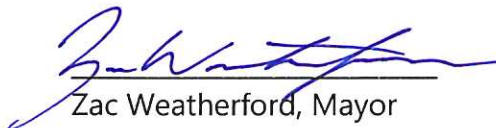
SECTION 1. AUTHORIZATION OF AGREEMENT. The City Council hereby authorizes the professional services contract between the City of Dayton and Blue Mountain Action Council to provide third-party low-income residential utility customers eligibility services as prescribed by Chapter 4-9 of the Dayton Municipal Code, as set forth and attached hereto as Attachment "A".

SECTION 2. EXECUTION OF AGREEMENT. The Mayor is hereby authorized to execute the contract on behalf of the City of Dayton. The Mayor and his designee(s) are hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

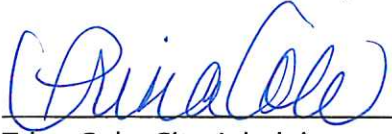
SECTION 3. EFFECTIVE DATE. This Resolution shall be effective and in full force immediately upon passage.

PASSED by the City Council of the City of Dayton, Washington on this 14TH
day of April, 2021.

City of Dayton

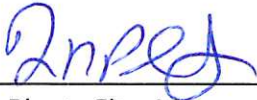

Zac Weatherford, Mayor

Attested/Authenticated by:



Trina Cole, City Administrator

Approved as to form:



Quinn Plant, City Attorney

CITY OF DAYTON
PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT (Contract) is made this 14th of April, 2021, by and between the City of Dayton, Washington, a municipal corporation, hereinafter referred to as "CITY", and the Blue Mountain Action Council, hereinafter referred to as "SERVICE PROVIDER".

I. RECITALS

WHEREAS, CITY intends to issue utility billing discounts for low-income utility residential customers.

WHEREAS, SERVICE PROVIDER agrees to provide professional services, requested by CITY, to determine the eligibility of CITY residential utility customer for the city-sponsored utility rate reduction discount as provided in Chapter 4-9 Dayton Municipal Code.

II. WITNESSES

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

1. SCOPE OF SERVICES

A. SERVICE PROVIDER shall provide to CITY the following services:

- i. Promote the utility rate reduction discount program to clients of SERVICE PROVIDER;
- ii. Interview people one-on-one through scheduled appointments;
- iii. Review eligibility to include verification of current address' and annual income from all sources (at or below 125 percent of poverty as defined by the U.S. Government);
- iv. Provide written notification of eligibility to the CITY; and
- v. Maintain source documentation and a copy of the utility discount authorization for a minimum of six years.

B. SERVICE PROVIDER shall provide the services set out above in accordance with the following schedule:

- i. All deliverables to be provided to CITY beginning January 1 - December 31 and throughout the year until notified by CITY otherwise.
- C. To assist SERVICE PROVIDER in carrying out these obligations, CITY shall perform the following services:
 - i. Provide to SERVICE PROVIDER the city-approved Utility Services Relief Discount Application form, as provided in the form attached hereto as Attachment "A". Said form may be changed from time to time by CITY, at which time, the updated version of the form shall be transmitted to the SERVICE PROVIDER.
 - ii. Advertise/notify city residents of the service through SERVICE PROVIDER.
 - iii. Pay SERVICE PROVIDER at the annual agreed-upon rate for each completed application.

2. EFFECTIVE AND TERMINATION DATES

- A. This Contract shall be effective as of the date set forth above, and, shall remain in effect until such time as either party decides to terminate the Contract.
- B. CITY and SERVICE PROVIDER may by mutual written agreement terminate this Contract at any time .
- C. CITY may, with at least thirty (30) days written notice to SERVICE PROVIDER, terminate this Contract for any reason deemed appropriate at its sole discretion.

3. COMPENSATION

- A. CITY shall pay SERVICE PROVIDER on a per completed application basis as mutually agreed to on an annual basis. An annual rate agreement will be issued as a contract addendum by SERVICE PROVIDER not later than November 1 of each year establishing the application rate for each completed application. The addendum shall become effective January 1 of the next calendar year. Effective April 14th, 2021, the application rate per completed application will be \$ 30.00.
- B. SERVICE PROVIDER shall submit to CITY an itemized invoice (payment request) at the end of each month for services performed in accordance with this Contract.
- C. CITY shall process payment requests in its normal course and manner for accounts payable. Invoices for payment shall be mailed to: City of Dayton, 111 S.

1st St. Dayton, WA, 99328, or emailed to info@daytonwa.com.

- D. In the event of termination, CITY shall pay SERVICE PROVIDER for work performed in accordance with this Contract prior to the termination date.
- E. In the event of termination by SERVICE PROVIDER under a breach of contract by CITY, CITY shall pay to SERVICE PROVIDER as provided in subsection 7 of this Section, and SERVICE PROVIDER'S remedy shall be limited to termination of this Contract and receipt of payment as provided in this section.
- F. In the event of termination by CITY under a breach of contract by SERVICE PROVIDER, CITY shall pay to SERVICE PROVIDER as provided in subsection D of this Section, with the exception that if CITY completes the work either through its own forces or through another SERVICE PROVIDER, and the cost exceeds the amount that would have been paid to SERVICE PROVIDER, the excess cost shall be deducted from the amount owed to the SERVICE PROVIDER.

4. BREACH OF CONTRACT

- A. Either CITY or SERVICE PROVIDER may terminate this Contract in the event of a breach of this Contract by the other party.
- B. Prior to such termination however, the party seeking to terminate shall give the other party written notice of the breach, which written notice shall specify the failure and demand correction or remedy within ten (10) days. If the party has not entirely cured the breach within ten (10) days of the notice, then the party giving notice may terminate this Contract at any time thereafter by giving written notice of termination.

5. NOTICE

Any notice provided for under this Contract shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such address as either party hereafter shall specify in writing to the other party:

If to the CITY:

City of Dayton
ATTN: Zac Weatherford, Mayor
111 S. 1st St
Dayton, WA 99328

If to the SERVICE PROVIDER:

Blue Mountain Action Council
ATTN: Kathy Covey 1520 Kelly Place
Walla Walla, WA 99362

6. COMPLIANCE WITH LAWS

- A. In connection with its activities under this Contract, SERVICE PROVIDER shall comply with all applicable Federal, State and local laws and regulations.
- B. This Contract shall be construed to be governed by the laws of the State of Washington.

7. NON -DISCRIMINATION

- A. During the performance of this contract, SERVICE PROVIDER agrees as follows:
 - i. SERVICE PROVIDER will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, genetic information, marital status, age, Vietnam-era veteran status, disabled veteran condition, disability, or national origin.
 - ii. SERVICE PROVIDER will not, on grounds of any of the protected class indicators listed in subsection A(i) of this Section :
 - a. Deny an individual any services or other benefits provided under this agreement.
 - b. Provide any service(s) or other benefits to an individual(s), which are different, or are provided in a different manner from those provided to others under this agreement.
 - c. Subject an individual to segregation or separate treatment in any manner related to the receipt of any service(s) of other benefits provided under this agreement.
 - d. Deny any individual an opportunity to participate in any program provided by this agreement through an opportunity to do which is different from that afforded others under this agreement. SERVICE PROVIDER will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination due to any of the protected class indicators in subsection A(i) of this Section 7, including, but not limited to, determining:

- 1) The types of services or other benefits to be provided;
- 2) The class of individuals to whom or the situation in which, such services or other benefits will be provided; or,
- 3) The class of individuals to be afforded an opportunity to participate in any services or other benefits.

8. INDEMNIFICATION

- A. SERVICE PROVIDER agrees to indemnify, hold harmless, and at CITY'S request, defend CITY, its officers, officials, employees and volunteers from and against any and all liability or alleged liability, all suits, legal proceedings, claims, injuries, damages, losses and expenses, including but not limited to attorney's fees, arising out of or in connection with or incidental to any negligent act or performance, or error or omission of SERVICE PROVIDER or anyone acting on behalf of SERVICE PROVIDER in connection with or incidental to this Contract, except for injuries and damages caused by the sole negligence of the CITY.
- B. CITY agrees to indemnify, defend, and hold harmless SERVICE PROVIDER from all claims, damages, and expenses, including attorney's fees arising out of or incidental to the SERVICE PROVIDER's performance of obligations under this agreement. SERVICE PROVIDER shall provide services under this Contract in accordance with generally accepted professional practices for the intended use of the project and no warranty or representation either expressed or implied is intended as part of these services.
- C. It is further specifically and expressly understood that the indemnification provided herein constitutes the SERVICE PROVIDER'S waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.
- D. This Contract is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without written consent of the other.

9. INSURANCE

- A. SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work

hereunder by the SERVICE PROVIDER, its agents, representatives, or employees. SERVICE PROVIDER shall obtain insurance of the types described below:

- i. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- ii. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an insured under the SERVICE PROVIDER'S Commercial General Liability insurance policy with respect to the work performed for the CITY.
- iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- iv. Professional Liability insurance appropriate to the SERVICE PROVIDER'S profession.

10. MINIMUM INSURANCE LIMITS

A. SERVICE PROVIDER shall maintain the following insurance limits:

- i. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- ii. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- iii. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

11. OTHER INSURANCE PROVISIONS

A. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

- i. The SERVICE PROVIDER'S maintenance of insurance as required by the agreement shall not be construed to limit the liability of the SERVICE

PROVIDER to the coverage provided by such insurance, or otherwise limit the CITY'S recourse to any remedy available at law or in equity.

- ii. The SERVICE PROVIDER'S insurance coverage shall be primary insurance as respect the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be excess of the SERVICE PROVIDER 's insurance and shall not contribute with it.
- iii. The SERVICE PROVIDER shall furnish the CITY with original certificates and copy of the amendatory endorsements, including but not limited to the additional insured endorsement, evidencing the insurance requirements of the SERVICE PROVIDER before commencement of the work.
- iv. The SERVICE PROVIDER'S insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.
- v. Insurance is to be placed with insurers with a current A.M. Best rating of not less _____.
- vi. Failure on the part of the SERVICE PROVIDER to maintain the insurance as required shall constitute a material breach of contract, upon which the CITY may, after giving notice to the SERVICE PROVIDER to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid by the CITY on demand, or at the sole discretion of the City, offset against fund, due to the SERVICE PROVIDER from the CITY.

12.ASSIGNMENT

SERVICE PROVIDER shall not assign this Contract, in whole or in part, or any right or obligation hereunder, without prior written approval of CITY.

13.AMENDMENTS

CITY and SERVICE PROVIDER may amend this Contract at any time only by written amendment. Any change in the Scope of Services shall be deemed an amendment subject to this subsection.

14.SEVERABILITY

In the event any provisions of this Contract shall be held to be invalid, illegal, or

unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

15. LITIGATION/ARBITRATION

- A. Any dispute arising out of or in connection with this Contract which is not settled by mutual agreement within sixty (60) days of notification in writing by either party may be submitted to litigation or arbitration. Should that occur, all court costs and attorney's fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.
- B. Notwithstanding any dispute under this Contract SERVICE PROVIDER shall continue to perform its work pending resolution of the dispute. and CITY shall make payments as required by this Contract for undisputed portions of the work.
- C. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other party.

16. MAINTENANCE OF RECORDS

SERVICE PROVIDER shall maintain record on a current basis to support its billings to CITY. CITY, or its authorized representative, shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of SERVICE PROVIDER regarding its billings or its performance hereunder, for a period of six (6) years after completion or termination of this Contract.

City of Dayton

Blue Mountain Action Council


By: Zac Weatherford, Mayor


By: Authorized Signer

Attest/Authenticate:



Trina Cole, City Administrator

Approved as to form:



Quinn Plant, City Attorney