

**RESOLUTION 22-14**

**A RESOLUTION OF THE SOUTH WEBER CITY COUNCIL  
AWARDING MULTI-HAZARD MITIGATION PLAN PROJECT**

**WHEREAS**, in late 2020 Council committed funds for the creation of a Multi-Hazard Mitigation Plan; and

**WHEREAS**, the City hired a professional grant writer to help apply for a Building Resilient Infrastructure and Communities (BRIC) Planning Grant; and

**WHEREAS**, the Federal Emergency Management Agency (FEMA) awarded South Weber a BRIC grant in February; and

**WHEREAS**, Elwell Consulting Group (ECG) is an expert in both creating the mitigation plan and tracking/reporting the details as required by FEMA;

**NOW THEREFORE BE IT RESOLVED** by the Council of South Weber City, Davis County, State of Utah, as follows:


**Section 1. Award:** The Multi-Hazard Mitigation Plan Project is hereby awarded to Elwell Consulting Group with terms and conditions outlined in the agreement attached as Exhibit 1.

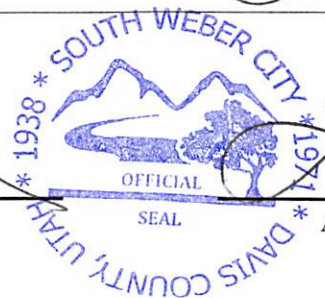
**Section 2: Repealer Clause:** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

**PASSED AND ADOPTED** by the City Council of South Weber, Davis County, on the 22nd day of March 2022.

Roll call vote is as follows:

Council Member Dills	<input checked="" type="radio"/>	FOR	AGAINST
Council Member Petty	<input checked="" type="radio"/>	FOR	AGAINST
Council Member Soderquist	<input checked="" type="radio"/>	FOR	AGAINST
Council Member Alberts	<input checked="" type="radio"/>	FOR	AGAINST
Council Member Halverson	<input checked="" type="radio"/>	FOR	AGAINST

  
**Rod Westbroek, Mayor**

  
**Attest: Lisa Smith, Recorder**



# PROFESSIONAL SERVICES AGREEMENT

3014 W. Chimney Rock Circle Taylorsville, Utah 84129  
PH 801-870-9709

**South Weber City** ("CLIENT"), HEREBY AUTHORIZES **ELWELL CONSULTING Group, PLLC** ("ENGINEER"), A UTAH PROFESSIONAL LIMITED LIABILITY COMPANY, TO PROVIDE THE SERVICES DESCRIBED BELOW SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW.

CLIENT is a(n):      Individual       Corporation       Partnership       Sole Proprietorship

**A. CLIENT INFORMATION:**

**Client Name:** South Weber City

**Representative:** David Larson

**Address:** 1600 E. South Weber Dr  
South Weber City, Utah 84405

**Phone:** (801) 479-3177

**B. PROJECT DESCRIPTION:**

**Project Name and Location:**

South Weber City MMP

**Estimated Begin/End Dates:**

3/24/22 to 5/24/23

**ECG Project No.:** 2022-002

**C. ENGINEER'S SERVICES:**

ENGINEER shall provide the services set forth below or within the Scope of Services attached hereto and by this reference made a part hereof. Services not expressly set forth below or within attached Scope of Services or otherwise incidental to or implicit in those services, as determined solely by ENGINEER, are not a service of ENGINEER.

*Description of Services:* South Weber City Multi-Hazard Mitigation Plan Project (see attached ELWELL Consulting Group, PLLC (ECG) Scope and Fee Proposal dated 3/4/22)

**D. COMPENSATION:**

ENGINEER shall be compensated as described in this paragraph D and within the Scope of Services attached hereto and by this reference made a part hereof, and Article 1 herein. CLIENT shall pay a **retainer fee of \$0.00 prior to commencement** of ENGINEER'S services. Said fee shall be applied to the final invoice for services provided hereunder. In the event there is conflict between the compensation provision of this paragraph D and the Scope of Services, this paragraph D and Article 1 herein shall control.

*Time and Materials with not to exceed ceiling of Sixty-Six Thousand, Five Hundred and One Dollars (\$66,501).*

HAVING READ, UNDERSTOOD AND AGREED TO THE FOREGOING, **AND THE TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE HEREOF,** CLIENT AND ENGINEER, BY AND THROUGH THEIR AUTHORIZED REPRESENTATIVES, HAVE SUBSCRIBED THEIR NAMES HERETO EFFECTIVE THE LAST DATE APPEARING BELOW.

**SOUTH WEBER CITY**

**ELWELL CONSULTING Group, PLLC**

Authorized Signature

Authorized Signature

By (print): David Larson

By (print): Bryon Elwell, Sr.

Title (print): City Manager

Title (print): President

Date:

Date:

## **ARTICLE 1. COMPENSATION**

- 1.1 **Reimbursable Expenses.** Reimbursable expenses include all expenditures made by or on behalf of ENGINEER in performing its services hereunder and in the interest of the project.
- 1.2 **Payments.** CLIENT will be invoiced at the end of the first calendar month following the effective date of this Agreement and at the end of each calendar month thereafter. Invoices shall reflect billing for work performed by ENGINEER during the month invoiced. Payment on an invoice is due upon receipt of the invoice by CLIENT. ENGINEER anticipates services will be performed during regular working hours and will not require overtime; if overtime hours or an accelerated work schedule is required, additional fees will be negotiated prior to performing these services. In the event of a dispute regarding an invoice, CLIENT shall pay all undisputed amounts as per this Article and disputed amounts shall be reserved for resolution.
- 1.3 **Late Payment/Collection.** ENGINEER may assess a carrying charge of 1.5 percent per month on progress payments not made within thirty (30) days of the date of invoice, which charge CLIENT warrants will be paid on demand. ENGINEER may, in its sole discretion and without notice, suspend or terminate its services under this Agreement should CLIENT not pay the amount invoiced within forty-five (45) days of the date of invoice. ENGINEER further reserves the right to withhold from CLIENT any instruments of ENGINEER's service, or copies thereof, developed for CLIENT under this Agreement pending payment on CLIENT's outstanding indebtedness. If it becomes necessary to refer the account to a collection agency CLIENT agree to pay all costs, not limited to, attorney's fees, court costs, costs of preparing documents for court and collection agency fees, whether incurred by filing a lawsuit or otherwise.
- 1.4 **Estimates of Compensation.** Estimates of ENGINEER'S compensation or fee where surveying services are to be provided only represent ENGINEER'S opinion given the then existing information and circumstances and are not binding upon ENGINEER. Actual compensation or fee for surveying services may vary substantially depending upon conditions beyond ENGINEER'S knowledge or control, including but not limited to adverse weather, lack of adequate monumentation or control, and/or site conditions.

## **ARTICLE 2. SPECIAL TERMS AND CONDITIONS**

- 2.1 **Additional Services.** Services not expressly or implicitly included with those herein specified, as determined by ENGINEER, are not covered by this Agreement. Such services may be provided only upon the execution of an amendment in compliance with this Agreement.
- 2.2 **Construction Estimates.** Estimates of construction cost, material quantities and construction time estimates provided by ENGINEER under this Agreement represent its opinion and are subject to change and are contingent upon factors over which ENGINEER has no control. ENGINEER makes no warranty, express or implied, as to the accuracy of such estimates.
- 2.3 **Construction Services.** Except as may be expressly provided by this Agreement, CLIENT recognizes that ENGINEER'S compensation for any services rendered during construction contemplates one (1) construction contract being let and construction completion within the time period set forth herein. Should the period for construction be exceeded through no fault of ENGINEER or more than one (1) construction contract be let, ENGINEER'S compensation shall be increased for services rendered in relation to such additional contract(s) or beyond said time period. ENGINEER is not responsible for the means, methods or sequences of construction nor for the safety of workers or others at the construction site. Construction review services are neither exhaustive nor continuous and consist of periodic visits to the project site intended only to determine whether construction is in general conformance with construction contract documents. ENGINEER is not responsible for the performance or non-performance of the construction contractor or its subcontractor(s).
- 2.4 **Termination.** This Agreement may be terminated by either party upon written notice should the other party fail substantially to perform in accordance with this Agreement through no fault of the party initiating the termination. This Agreement may be terminated by CLIENT upon seven (7) days written notice to ENGINEER in the event that the Project is permanently abandoned. If this Agreement is terminated through no fault of the ENGINEER, CLIENT shall pay ENGINEER for services performed and Reimbursable Expenses incurred in accordance with this Agreement and, upon request, a Termination Adjustment equaling fifteen percent (15%) of the estimated fee remaining to be earned at the time of termination to account for ENGINEER'S rescheduling adjustments, reassignment of personnel and related costs incurred due to termination. If this Agreement is terminated by CLIENT for cause, CLIENT shall pay ENGINEER for services performed and Reimbursable Expenses incurred in accordance with this Agreement.
- 2.5 **Representatives.** ENGINEER and CLIENT shall designate in writing a person authorized to act as their Representative. Said Representative shall receive and examine documents submitted by the other party and shall interpret and define policies and render decisions and authorizations promptly to prevent unreasonable delay in the progress of the Project.
- 2.6 **Prohibition Against Hiring.** During the term of this contract ENGINEER and CLIENT shall be prohibited from hiring or otherwise retaining, in any capacity, each other's personnel. This applies to employees and others under contract at any level.
- 2.7 **Limitation of Liability.** CLIENT agrees to limit the liability of ENGINEER and ENGINEER'S consultants, employees and agents to CLIENT and to all contractors, subcontractors and to all other persons which may arise from or be due directly or indirectly to any strict liability, breach of contract or other duty and/or any professional or other negligent act, error and/or omission of ENGINEER and/or ENGINEER'S consultants, employees or agents in connection with the performance of services for this Project, such that the total aggregate liability of ENGINEER and ENGINEER'S consultants, employees and agents to those named shall not exceed the total contract value or One Hundred Thousand Dollars (\$100,000.00), whichever is the lesser total amount. For the purposes of computing the total aggregate liability to be limited hereunder, the total aggregate liability shall include the attorneys' fees and costs of litigation reasonably incurred by ENGINEER and ENGINEER'S consultants, employees and agents in the defense of such claims. Said limit of liability may be increased prior to the execution of this Agreement up to ENGINEER'S then effective professional liability insurance limits upon CLIENT'S written request and payment of an additional fee as agreed upon by both parties.

- 2.8 **Ownership of Documents.** All plans, specifications, tracings, notes, data and other documents, including electronic media/disks, are instruments of professional service and ENGINEER shall retain the ownership and all common law, statutory and other reserved rights, including copyright, in such data and documents. Such instruments are prepared and intended only for use as an integrated set on the particular project and for the limited purposes specified. Modification or use on other projects of such instruments of service, or copies thereof, without ENGINEER'S prior express written consent shall be at CLIENT'S sole risk. CLIENT shall hold harmless, indemnify and defend ENGINEER and ENGINEER'S consultants, employees and agents from and against any and all claims and/or liability arising out of any such non-permissive modification or use. Final project deliverable(s) are contingent upon receipt of full payment.
- 2.9 **CLIENT Information.** ENGINEER and ENGINEER'S consultants shall have the right to rely on any and all information supplied to ENGINEER or ENGINEER'S consultants by or through CLIENT, and shall not have a duty to verify the accuracy of such information unless otherwise expressly agreed herein. CLIENT shall disclose information or knowledge of hazardous materials on the project site. CLIENT shall hold harmless, indemnify and defend ENGINEER and ENGINEER'S consultants, employees and agents from and against any claims and/or liability related, directly or indirectly, to ENGINEER'S or ENGINEER'S consultant's use of or reliance upon any such information.
- 2.10 **Record Drawings.** Any Record Drawings called for herein will be developed based upon bid specifications and plans as modified by actual construction. Information related to such modifications may be provided by others, including the Construction Contractor, who is to document such modifications as part of its performance. ENGINEER may rely upon such information and is not responsible for the accuracy of such information as it affects the Record Drawings. Record Drawings serve to document substantial alterations between bid plans and actual construction and do not document minor alterations or differences.
- 2.11 **Site Access.** CLIENT shall secure rights of access for ENGINEER to all property reasonably necessary to the performance of ENGINEER'S services.
- 2.12 **Subpoenas and testimony.** If ENGINEER is required by provisions of law or by court order, including if a third-party subpoenas ENGINEER'S records or requires ENGINEER to testify concerning work or services performed or which ENGINEER has performed for CLIENT, ENGINEER will consult with CLIENT to determine whether CLIENT intends to assert any objections or privileges (to the extent CLIENT may properly do so). CLIENT hereby agrees to pay ENGINEER for ENGINEER'S time and expenses reasonably incurred, and at the then prevailing rates, in relation to any such demand or obligation, including but not limited to, time and expenses for searching and copying records, reviewing documents, consulting with legal counsel, designating privileged documents, asserting objections, appearing at depositions or hearings or trials, litigating issues raised by such request(s), and for ENGINEER'S actual attorney's fees and costs incurred relating to these obligations and services.

## **ARTICLE 3. GENERAL TERMS AND CONDITIONS**

- 3.1 **Applicable Law.** This Agreement shall be interpreted and enforced in and according to the laws of the State of Utah.
- 3.2 **Assignment; Subcontracting.** Neither CLIENT nor ENGINEER shall assign its interest in this Agreement without the written consent of the other, except that ENGINEER may subcontract any portion of its services without such consent. CLIENT is primarily responsible for the compensation of any person(s) providing such subcontracted services and such person(s) shall have a right of action directly against CLIENT for CLIENT'S nonpayment. This Agreement shall be binding upon and inure to the benefit of the successors, assigns or any other transferees of the signatories hereto. Except as expressly provided in this paragraph, no rights or benefits are conferred to third parties by this Agreement.
- 3.3 **Force Majeure.** Any delay or default in the performance of any obligation of either party under this Agreement resulting from any cause(s) (excluding financial inability) beyond said party's reasonable control shall not be deemed a breach of this Agreement. The occurrence of any such event shall suspend the obligation of said party as long as performance is delayed or prevented thereby.
- 3.4 **Attorney's Fees.** In the event of CLIENT'S default, CLIENT shall pay all costs incurred by ENGINEER as a result of said default, including reasonable attorney's fees, whether incurred through initiation of legal proceedings or otherwise.
- 3.5 **Severability; Waiver.** In the event any term, condition or other provision(s) or any portion thereof of this Agreement is held to be unenforceable, the remaining provisions or portions shall remain valid and binding upon the parties. One or more waiver of any term, condition or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.
- 3.6 **Amendments; Merger.** This Agreement may be amended only by written instrument expressly referring hereto and duly signed by the parties. This Agreement constitutes the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations and/or agreements, written or oral.

## **ARTICLE 4. CONFIDENTIALITY**

- 4.1 **Confidential Information.** Confidential Information means any information disclosed by either party to the other party, either directly or indirectly. In writing, orally, or by inspection of tangible objects (including, without limitation documents, samples, equipment, drawings, etc) that is designated as "Trade Secret", "Confidential", "Proprietary" or some similar designation, or is of such a nature or has been disclosed in such a manner that it should be obvious to the receiving party that such is claimed confidential. Confidential Information includes without limitation a disclosing party's trade secrets, know-how, intellectual property, and proprietary information.
- 4.2 **Non-Use and Non-Disclosure.** Each party agrees not to use any Confidential Information of the other party for any purpose other than intended as pertains to the Scope of Services defined herein. Each party agrees not to disclose any Confidential Information of the other party to employees or third parties except those who are required to have the information in order to complete the services as defined in the Scope of Services.