

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter “**Agreement**”) is entered into by and between Spencer Stuart Star US Inc. dba Kincentric (hereinafter referred to as “**SERVICES PROVIDER**”) and the Oklahoma City Water Utilities Trust, a public trust, enacted in accordance with the requirements under Oklahoma Law (hereinafter referred to as “**OCWUT**”).

WITNESSETH:

WHEREAS, on February 1, 2023, **OCWUT** prepared a Request for Proposal (“RFP”) seeking a Professional Services Agreement to provide an Employee Engagement Communications Plan; and

WHEREAS, on March 8, 2023, **OCWUT** received responses to its RFP; and

WHEREAS, a selection committee reviewed and evaluated the responses; and

WHEREAS, the **SERVICES PROVIDER** represented itself, both in its response (“Proposal”) and its interviews (“Interviews”) as an expert in the field of providing skilled professionals willing, able, and capable of timely providing the services requested and required by **OCWUT** in the RFP; and

WHEREAS, based upon the representations, guarantees, and warranties expressed by the **SERVICES PROVIDER** both in the Proposal and the Interviews, the selection committee recommended and the General Manager of **OCWUT** selected and entered this **Agreement** with the **SERVICES PROVIDER**; and

WHEREAS, **OCWUT** retains **SERVICES PROVIDER** to provide professional services as an independent contractor; and

WHEREAS, **SERVICES PROVIDER** agrees to provide **OCWUT** all services, in accordance with the standards exercised by experts in the field, necessary to provide **OCWUT** services, products, solutions and deliverables that meet all the purposes and functionality requested or described in the RFP and in this Agreement.

NOW, THEREFORE, for and in consideration of the above premises and the mutual covenants set forth herein, **OCWUT** and **SERVICES PROVIDER** hereby mutually agree as follows:

1. Professional Services Agreement

Subject to the terms and conditions of this **Agreement**, **OCWUT** retains **SERVICES PROVIDER**, an independent contractor, to provide **OCWUT** all services, in accordance with the standards exercised by experts in the field, necessary to provide **OCWUT** services, products, solutions, and deliverables that meet all the purposes and functionality requested or described in the RFP and in this **Agreement**.

(a) This **Agreement** governs the Statement of Work including, but not limited to, all services, products, solutions and deliverables to be provided by **SERVICES PROVIDER** to **OCWUT**. The Attachments are incorporated into this **Agreement** by reference and, should there be a conflict in language, terms, conditions, or provisions, shall have the priority and precedential value as set forth in this **Agreement**.

(b) The text of this **Agreement**, together with the Attachments, constitutes the entire Agreement and the only understanding and agreement between **OCWUT** and **SERVICES PROVIDER** with respect to the services, products, solutions and deliverables to be provided by **SERVICES PROVIDER** hereunder. This **Agreement** may only be amended, modified or changed in writing when signed by all parties, or their respective specifically authorized representatives, as set forth in this **Agreement**.

(c) If there is a conflict in language, terms, conditions, or provisions, in this **Agreement** between the text of this document, and any language, term, condition, or provision in any Attachment, then the text of this document, shall govern and control over any conflicting language, term, condition, or provision in any Attachment. As among the Attachments any conflict in the language, terms, conditions, or provisions shall be governed in the following order of priority and precedence:

Attachment “A” (“Statement of Work”)

Attachment “B” (“Schedule of Fees and Rate Card”),

Attachment “C” (“SERVICES PROVIDER’S Team”),

Attachment “D” (“Insurance”),

Attachment “E” (“Performance Bond”), and

Attachment “F” (“SERVICES PROVIDER’S Interview and Proposal”).

2. Retention of SERVICES PROVIDER and Scope of Services

(a) **SERVICES PROVIDER** is solely responsible for the actions, non-action, omissions, and performance of **SERVICES PROVIDER'S** employees, agents, contractors, and subcontractors (herein collectively included in the term “Services Provider’s Project Team”) and to ensure the timely provision of the Project, timely performance of the Statement of Work, and the timely performance of all services, products, solutions and deliverables as each are defined in **Attachment “A”**

(b) **SERVICES PROVIDER** will be solely responsible to ensure the **SERVICES PROVIDER’S** Delivery Project Team fully understands the Project, the Statement of Work, the Deliverables, the schedule for performance, and **OCWUT’S** goals and purposes. **SERVICES PROVIDER** will be solely responsible to ensure the **SERVICES PROVIDER’S Team** specifically assigned to work with **OCWUT**, timely provides the Project and satisfies **SERVICES PROVIDER’S** obligations under this **Agreement**. Unless for reasons that were not reasonably foreseeable at the time of execution of this Agreement, **SERVICES PROVIDER** may not change the **SERVICES PROVIDER’S Team**, including roles, responsibilities, and commitment levels, for the services to be provided as set forth on **Attachment “C” (“SERVICES PROVIDER’S Team and described roles, responsibilities and commitment levels”)** without the prior written consent of the General Manager of OCWUT (“**General Manager**”) or designee.

(c) **SERVICES PROVIDER** shall comply with all applicable federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the performance or services provided under this **Agreement**. **SERVICES PROVIDER** shall obtain all patents, licenses and any other permission required to provide all services, products, solutions and deliverables and for use of all services, products, solutions and deliverables by **OCWUT**.

3. Compensation

(a) **OCWUT** shall pay **SERVICES PROVIDER** as specified in an applicable Statement of Work or as otherwise stated in **Attachment “B” (“Schedule of Fees and Rate Card”)**,

(b) **OCWUT** and **SERVICES PROVIDER** acknowledge that the compensation to be paid **SERVICES PROVIDER** pursuant to this Agreement has been established at an amount

reasonable for the availability and services of **SERVICES PROVIDER and SERVICES PROVIDER'S Team.**

4. Independent Contractor Status

(a) The parties hereby acknowledge and covenant that:

(1) **SERVICES PROVIDER** is an independent contractor and will act exclusively as an independent contractor is not an agent or employee of **THE CITY OF OKLAHOMA CITY** (hereinafter "THE CITY" or "CITY") **OR OCWUT** in performing the duties in this **Agreement**.

(2) The parties do not intend, and will not hold out that there exists, any corporation, joint venture, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent contractor relationship.

(b) All payments to **SERVICES PROVIDER** pursuant to this **Agreement** shall be due and payable in the State of Oklahoma, even if services of **SERVICES PROVIDER** are performed outside the State of Oklahoma.

(c) The **CITY OR OCWUT** will not withhold any social security tax, workmen's compensation, Medicare tax, federal unemployment tax, federal income tax, or state income tax from any compensation paid to **SERVICES PROVIDER** as **SERVICES PROVIDER** is an independent contractor and the members of its **SERVICES PROVIDER'S Team**, including FTEs assigned to work, that are not employees of **THE CITY OR OCWUT**. Any such taxes, if due, are the responsibilities of **SERVICES PROVIDER** and will not be charged to **THE CITY OR OCWUT**.

(d) **SERVICES PROVIDER** acknowledges that as an independent contractor it and its **Project Team**, including FTEs assigned to work are not eligible to participate in any health, welfare or retirement benefit programs provided by **THE CITY OR OCWUT** for its employees.

5. Termination and Stop Work.

(a) This **Agreement** shall commence upon execution by the last party hereto and shall continue in effect as stated herein, unless terminated by either party as provided for herein. The **General Manager** or designee is hereby authorized to issue notices of termination or suspension

on behalf of **OCWUT**. This **Agreement** can be terminated, with or without cause, upon written notice, at the option of **OCWUT**.

(1) Upon receipt of a notice of termination from **OCWUT**, **SERVICES PROVIDER** shall (1) immediately discontinue all services and activities (unless the notice directs otherwise), and

(2) upon payment for products or services as described in an applicable Statement of Work, **SERVICES PROVIDER** shall deliver to **OCWUT** all deliverables and reports created by **SERVICES PROVIDER** at the time notice is received. Upon termination by **OCWUT**, **OCWUT** shall pay **SERVICES PROVIDER** in accordance with the applicable Statement of Work for work completed and for work in progress, but not completed and accepted, as mutually determined by **OCWUT** and **SERVICE PROVIDER** but not to exceed any payment milestones in the Statement of Work.

(3) The rights and remedies of **OCWUT** provided in this paragraph are in addition to any other rights and remedies provided by law or under the **Agreement**. Termination herein shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **SERVICES PROVIDER** under this **Agreement**.

(b) Upon notice to **SERVICES PROVIDER**, **OCWUT** may issue a stop work order suspending any services, performances, work, products, deliverables, or solutions under this **Agreement**. Any stop work order shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **SERVICES PROVIDER** under this **Agreement**. In the event **OCWUT** issues a stop work order to **SERVICES PROVIDER**, **OCWUT** will provide a copy of such stop work order to **SERVICES PROVIDER**. Upon receipt of a stop work order issued from **OCWUT**, **SERVICES PROVIDER** shall suspend all work, services and activities except such work, services, and activities expressly directed by **OCWUT** in the stop work order. Upon notice to **SERVICES PROVIDER**, this **Agreement**, and any or all work, services, and activities thereunder, may be suspended up to thirty (30) days by **OCWUT**, without cause and without cost to **OCWUT**; provided however, **SERVICES PROVIDER** shall be entitled to an extension of all subsequent deadlines for a period equal to the suspension periods for those suspended work, services, and activities, and may charge a re-start fee to begin its

services again if and as set forth in the Statement of Work. The **General Manager**, or designee is hereby authorized to issue stop work orders on behalf of **OCWUT**.

6. Obligation upon Termination

In the event this **Agreement** is terminated, **OCWUT** shall pay **SERVICES PROVIDER** in accordance with the provisions of paragraph 5(a)(2) of this Agreement, then thereafter **OCWUT** shall have no further liability under this **Agreement** to **SERVICES PROVIDER** and **SERVICES PROVIDER** shall have no further obligations to **OCWUT**.

7. Warranties and Liability

(a) **SERVICES PROVIDER** warrants that all services, products, solutions and deliverables performed or provided under this **Agreement** shall be performed consistent with generally prevailing professional standards and expertise. **SERVICES PROVIDER** shall maintain during the course of this **Agreement** said standard of care, expertise, skill, diligence and professional competency for any and all such services, products, solutions and deliverables. **SERVICES PROVIDER** agrees to require all members of the **SERVICES PROVIDER'S Team**, including FTEs assigned to work to provide any and all services, products, solutions and deliverables at said same standard of care, expertise, skill, diligence and professional competence required of **SERVICES PROVIDER**.

(b) **SERVICES PROVIDER** will not be liable for any indirect, incidental, special or consequential damages arising out of this Agreement, and **SERVICES PROVIDER's** liability hereunder will be limited to the amounts actually paid by **OCWUT** under the Statement of Work of which the claim arose. This limitation will not apply to **SERVICES PROVIDER's** willful, fraudulent, or criminal misconduct or gross negligence or conduct in violation of Oklahoma law.

(c) During the term of this **Agreement**, **OCWUT'S** initial remedy for any breach of the above warranty shall be to permit **SERVICES PROVIDER** one additional opportunity to perform the services, or provide the products, solutions and deliverables without additional cost to **OCWUT**. If **SERVICES PROVIDER** cannot perform the services, or provide the products, solutions and deliverables according to the standards and requirements set forth in this **Agreement** within thirty (30) calendar days of the original performance date, **OCWUT** shall be entitled to terminate in accordance with this Agreement.

8. Indemnification

(a) **SERVICES PROVIDER** agrees to release, defend, and indemnify **THE CITY AND OCWUT**, and each of them, and hold **THE CITY AND OCWUT**, and each of them, harmless against any losses, claims, damages, liabilities, expenses (including all reasonable legal fees and expenses), judgments, fines or settlements in connection resulted from the intentional acts or omissions, negligence, and willful misconduct of **SERVICES PROVIDER** and the **SERVICES PROVIDER'S Team** in connection with this Agreement, including FTEs assigned to work. Any such indemnification or reimbursement shall be made by **SERVICES PROVIDER** within thirty (30) days of an appropriate finding of facts, whether by mutual agreement or by a court of law.

(b) The provisions of this paragraph shall survive the expiration of this **Agreement**. It is understood that these indemnities and hold harmless provisions are not limited or defined by the insurance required under the insurance provisions of this **Agreement**.

9. Confidentiality

SERVICES PROVIDER acknowledges that in the course of training and providing other support services to **OCWUT**, **OCWUT** may provide **SERVICES PROVIDER** with access to valuable information of a confidential and proprietary nature including but not limited to information relating to **OCWUT'S** employees, customers, marketing strategies, business processes and strategies, security systems, data and technology. **SERVICES PROVIDER** agrees that during the time period this **Agreement** is in effect, and thereafter, neither **SERVICES PROVIDER** nor **SERVICES PROVIDER'S Team**, (including the FTEs assigned to work) without the prior written consent of **OCWUT**, shall disclose to any person, other than another member of **OCWUT'S** or the **SERVICES PROVIDER'S Project Manager**, any confidential and proprietary information of **OCWUT** obtained by **SERVICES PROVIDER**. **SERVICES PROVIDER** will require and maintain adequate confidentiality agreements with its employees, agents, contractors, and subcontractors.

10. Miscellaneous.

(a) **Validity.** The invalidity or unenforceability of any provision of this **Agreement** shall not affect the validity or enforceability of any other provisions of this **Agreement**, which shall remain in full force and effect.

(b) **No Waiver.** The failure or neglect of any party hereto to insist, in any one or more instances, upon the strict performance of any of the terms or conditions of this **Agreement**, or waiver by any party of strict performance of any of the terms or conditions of this **Agreement**,

shall not be construed as a waiver or relinquishment in the future of such term or condition, but such term or condition shall continue in full force and effect.

(c) **No Assignment without Consent.** The parties hereby agree that as this is an agreement for the provision of specialized services, therefore **SERVICES PROVIDER** may not assign this **Agreement** in whole or in part without the prior written consent of **OCWUT**. In addition, **SERVICES PROVIDER** agrees that the **SERVICES PROVIDER'S Project Manager** may not be removed or replaced unless for reasons beyond the reasonable control of **SERVICES PROVIDER** without the express written consent of the **General Manager** or designee.

(d) **Venue and Applicable Law.** Clients and **SERVICES PROVIDER** hereby agree that any dispute, legal proceeding or action which may arise between or among them arising out of or in connection with this **Agreement** shall be adjudicated before a court located in Oklahoma City, Oklahoma, and each hereby submit to the exclusive personal jurisdiction of the courts of the State of Oklahoma located in Oklahoma City, Oklahoma and of the Federal District Court for the Western District of Oklahoma, located in Oklahoma City, with respect to any action or legal proceeding commenced by any party. The **SERVICES PROVIDER** irrevocably waives any objection they now or hereafter may have respecting the venue of any such action or proceeding brought in such a court or respecting the fact that such court is an inconvenient forum, relating to or arising out of this **Agreement**, and consents to the service of process in any such action or legal proceeding by means of registered or certified mail, return receipt requested, in care of the address set forth in the notice provision of this paragraph. This **Agreement** shall be construed and enforced in accordance with the laws of the State of Oklahoma.

(e) **Descriptive Headings.** The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

(f) **Counterparts.** This **Agreement** may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

(g) **Amendments.** This **Agreement** may not be modified, amended, altered or supplemented except upon the execution and delivery of a written amendment executed by each of the parties hereto.

(h) **Entire Contract.** This **Agreement** constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

(i) **Time is of Essence.** Both **OCWUT** and **SERVICES PROVIDER** expressly agree that time is of the essence with respect to this **Agreement**, and the time for performance of each task shall be made a part of the **Agreement** and shall be strictly observed and enforced. Any failure on the part of **OCWUT** to timely object to the time of performance shall not waive any right of **OCWUT** to object at a later time.

(j) **Substitutions.** During the performance of this **Agreement**, if any **SERVICES** named in this **Agreement** are substituted for other **SERVICES** to alternatively fulfill the same functions, but using improved methods or deliverables, then the alternative **SERVICES** will be substituted upon mutual agreement per a change request, and implemented by **SERVICES PROVIDER**.

(k) **No Extra Work.** No claims for extra work, product, services, solution, or deliverables of any kind or nature or character shall be recognized or paid by or be binding upon **OCWUT** unless such services, work, product, solution, or deliverable is agreed upon in a Statement of Work or first requested and approved in writing by **OCWUT** and **SERVICES PROVIDER** through a contract amendment or through a change request with fees based on the Rate Card pricing included in this Agreement with issued **OCWUT** purchase order. The **General Manager** is appointed as the authorized representative of **OCWUT** with authority to process, as needed, during the performance of this **Agreement**, any change request to the Statement of Work for different or additional services. However, change requests must be approved by the **General Manager** and the **SERVICES PROVIDER** in writing and accompanied by a purchase order to be effective. Unless otherwise agreed by the General Manager and **SERVICES PROVIDER**, change requests may not exceed the Change Request funds budgeted in the Statement of Work and compensation to the **SERVICE PROVIDER** will be based upon the Rate Card in the Statement of Work.

(l) **Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if e-mailed, hand delivered, or sent by facsimile transmission (upon confirmation of receipt), or if sent by certified

mail (upon the sooner of the expiration of three (3) days after deposit in United States post office facilities properly addressed with first class postage prepaid or acknowledgment of receipt). All notices and payments to a party will be sent to the addresses set forth below or to such other address or person as such party may designate by notice to each other party hereunder:

To SERVICES PROVIDER:

Kincentric
Attn: Legal
353 N. Clark Street, Suite 2400, Chicago IL 60654

To OCWUT:

Oklahoma City Water Utilities Trust
Attention: General Manager
420 West Main Street, Suite 500
Oklahoma City, Oklahoma 73102
Telephone: (405) 297-2272
Fax: (405) 297-3813

(m) **Effective.** This **Agreement** shall become effective upon execution by the last party ("Agreement Commencement Date").

(n) **Term.** This **Agreement** shall remain active for a period of two (2) years from the Agreement Commencement Date ("Term"). Should **OCWUT** desire to extend the **Agreement** for additional services, a written preliminary notice will be furnished to the **SERVICES PROVIDER** prior to expiration of the Term. (Such preliminary notice will not be deemed to commit **OCWUT** to extension.)

11. OCWUT'S Responsibilities.

(a) **OCWUT** shall only provide such space, equipment and personnel to assist **SERVICES PROVIDER** as expressly set forth in **Attachment "A"**.

(b) All financial obligations under this **Agreement** shall be solely the obligations of **OCWUT** regardless of how stated herein.

12. Insurance.

(a) **SERVICES PROVIDER** shall obtain and provide **OCWUT** with a copy of the certificate of insurance upon request and shall maintain such insurance throughout the term of this

Agreement as required and, in the form and in the amount, set forth in **Attachment “D”** which is incorporated herein by reference.

(b) **SERVICES PROVIDER** shall be responsible for providing **OCWUT** actual notice of any change, reduction, suspension, lapse or cancellation of any insurance provided under this **Agreement** at least thirty (30) days prior to such change, reduction, suspension, lapse or cancellation.

(1) Should any insurance required by this **Agreement** be changed, reduced, suspended or cancelled, or otherwise lapse for any reason during the term of this **Agreement**, then **OCWUT** may terminate this **Agreement**.

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C239035

SIGNED by Kincentric as SERVICES PROVIDER this 18 day of May, 2023.

By: Susannah Marlow

Print Name: Susannah Marlow

As: Managing Director

STATE OF MARYLAND)

COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 18th day of May, 2023 by SUSANNAH ALICE HIRSCH MARLOW, as _____ of Kincentric.



(Seal) My Commission Expires

09/25/2025

Lavleen Singh

Notary

Commission No.: N/A

C239035

APPROVED by the Oklahoma City Water Utilities Trust this 6TH day of
JUNE, 2023.

Attest:

OKLAHOMA CITY WATER UTILITIES TRUST

Amy K Simpson
Secretary



[Signature]
Chairman

CONCURRED by the City of Oklahoma City this 20TH day of JUNE, 2023.

Attest:

THE CITY OF OKLAHOMA CITY

Amy K Simpson
City Clerk



David Holt
Mayor

Reviewed for form and legality.

Craig Keith
Assistant Municipal Counselor

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Professional Services Agreement

Attachments

The following Attachments are incorporated by reference into the Agreement by and between OCWUT and SERVICES PROVIDER and shall have the priority and precedence as first set forth in paragraph one of this Agreement.

The Attachments include:

Attachment “A” (“Statement of Work”)

Attachment “B” (“Schedule of Fees and Rate Card”),

Attachment “C” (“SERVICES PROVIDER’S Team”),

Attachment “D” (“Insurance”),

Attachment “E” (“Performance Bond”), and

Attachment “F” (“SERVICES PROVIDER’S Interview and Proposal”)

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