



**STANDARD TERMS AND CONDITIONS  
FOR AGREEMENT TO PROVIDE  
ENGINEERING SERVICES TO THE  
CITY OF LEBANON, OREGON**

**Wastewater Treatment Plant Biosolids Imp.  
Project No. 26704  
30%Design Contract**

Engineering Services  
925 S. Main Street  
Lebanon, Oregon 97355

TEL: 541.258.4923  
FAX: 541.258.4954  
www.lebanonoregon.gov  
engineering@lebanonoregon.gov

**ARTICLE I: SCOPE**

For consideration set forth in Article V, the firm of KENNEDY JENKS, a professional engineering firm, hereinafter referred to as the ENGINEER, agrees to provide engineering services to the City of Lebanon, Oregon, a municipal corporation, hereinafter referred to as the CITY, for the services described in Attachment 'A', which is hereby incorporated into this Agreement by this reference as if fully set forth at this point. Unless modified in writing as set forth in Article II by the parties hereto, the duties of the ENGINEER and the CITY shall not be construed to exceed those services and duties specifically set forth in this Agreement.

**ARTICLE II: MODIFICATIONS**

The CITY and the ENGINEER shall not make modifications to the attached exhibit or these Standard Terms and Conditions except in writing as an Amendment to the Agreement. Said modifications shall be agreed to by both parties, with the scope of work, schedule, and compensation to be negotiated at the time the modification is proposed by either party. Modifications which do not meet these requirements shall not be binding, and no further compensation will be allowed for any work performed.

**ARTICLE III: RESPONSIBILITIES OF THE ENGINEER**

- A. Notice to Proceed: The ENGINEER will not begin work on any of the duties and services listed in Article I until the CITY directs in writing to proceed. Authorization to proceed on additional services not defined in Article I shall be in the form of an Amendment as defined in Article II.
- B. Level of Competence: The ENGINEER is employed to render professional services and shall be responsible, to the level of competence presently maintained by other practicing professional engineering firms in good standing and engaged in the same type of professional services, for the professional and technical adequacy and accuracy of designs, drawings, specifications, documents, and other work products furnished under this Agreement.
- C. Access to Records: The ENGINEER agrees to preserve and maintain for at least three years after final payment under this contract, any directly pertinent books, documents, papers, and records generated by or provided to the ENGINEER in the course of the performance of its duties under the terms of this contract. The ENGINEER further agrees that the CITY, or any of its duly authorized representatives, shall, during said period, have access to and the right to audit, examine, and reproduce such records and further agrees to include the above provision in all subcontracts.

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- D. Ownership of Documents: Upon completion of this Agreement and compensation to the ENGINEER, all data, drawings, and documents, including digital information, shall become the property of the CITY. The CITY will exercise discretion in any re-use of said documents and agrees to hold harmless the ENGINEER for any application of documents for any purpose other than the originally intended use.
- E. Compliance with Applicable Law: The ENGINEER covenants and agrees to comply with all of the obligations and conditions applicable to public contracts pursuant to ORS 279A.010, et seq, as though each obligation or condition were set forth fully herein. In addition, if this contract calls for a public improvement as that term is defined by ORS 279A.010(1)(cc), the ENGINEER further agrees to comply with all obligations and conditions applicable to public contracts for public improvements pursuant to ORS 279A.010(1)(aa) as though each obligation or condition were set forth fully herein. In addition, the ENGINEER covenants and agrees that in the performance of its duties hereunder, it will comply with all other state and federal requirements applicable to the CITY for projects of the type in question in effect at the time the services are performed.

The ENGINEER, its subconsultants, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.

#### **ARTICLE IV: RESPONSIBILITIES OF THE CITY**

- A. Authorization to Proceed: The CITY shall authorize the ENGINEER in writing to proceed prior to the ENGINEER starting work on any services listed in Article I.
- B. Access to Records, Facilities and Property: The CITY shall comply with reasonable requests from the ENGINEER for inspection or access to CITY records, facilities, and properties.
- C. Timely Review: The CITY shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the ENGINEER, obtain the advice of an attorney, insurance counselor, accountant, auditor, and other consultants as the CITY deems appropriate for such examination and render in writing decisions pertaining thereto in a timely manner so as not to unreasonably delay the services of the ENGINEER.

#### **ARTICLE V: COMPENSATION**

The CITY agrees to pay for the services in Article I in accordance with the compensation provisions in this Agreement. As consideration for providing the engineering services as defined in Article I, the CITY will pay the ENGINEER for actual hours worked by position or crew, and for office and field supplies, at the applicable rates listed in Attachment 'A'. There will be no compensation for the operation of company-owned vehicles. Compensation for other direct expenses will be at cost plus 10 percent. The total compensation for all services shall not exceed a total of **\$2,187,522.00** without prior written authorization from the CITY.

Payment will be made within 30 days after the receipt of billing for each service rendered during the month. If payment is not made within 30 days, interest on the unpaid balance will accrue beginning on the 31st day at the rate of 1 percent per month or the maximum interest rate permitted by law, whichever is less. Such interest is due and payable when the overdue payment is made, unless

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delay in payment is due to a contested billing. The CITY has the right to appeal or ask for clarification on any ENGINEER billing within 30 days of receipt of billing. Until said appeal is resolved or clarification is accepted, no interest will accrue on that portion of the billing. In the event of a contested billing, only that portion so contested shall be withheld, and the undisputed portion shall be paid in accordance with Article V.

#### **ARTICLE VI: INDEMNIFICATION**

The ENGINEER agrees to indemnify and hold harmless the CITY, its agents, officers, and employees, from and against any and all liability, claims, suits, loss, damages, costs, and expenses to the extent caused by the negligent or intentional misconduct, errors, or omissions of the ENGINEER, its officers, employees, or agents.

#### **ARTICLE VII: INSURANCE**

The ENGINEER shall obtain at ENGINEER's expense the insurance specified under this agreement prior to performing under this contract and shall maintain it in full force and at its own expense throughout the duration of this Agreement and all warranty periods. ENGINEER shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to CITY.

- A. Commercial General Liability insurance covering bodily injury, death and property damage on an Occurrence Form providing not less than \$1,000,000 per occurrence for bodily injury and property damage with not less than a \$2,000,000 General Aggregate. The CITY, its agents, officers, and employees shall be listed as an "Additional Insured" as respects this Agreement.
- B. Automobile Liability insurance covering all owned, non-owned, or hired vehicles providing not less than a \$1,000,000 per occurrence limit for any owned, non-owned or hired autos.
- C. Workers' Compensation insurance as required by Oregon Revised Statutes and including Employers' Liability insurance with limits not less than \$500,000.
- D. Professional Liability insurance with a limit not less than \$100,000 per occurrence and \$300,000 aggregate.

The ENGINEER shall provide the CITY Certificates of Insurance for each of the required insurance coverages prior to providing any services under this Agreement. Each certificate shall provide 30 days' notice of cancellation.

#### **ARTICLE VIII: ASSIGNMENT**

This Agreement is to be binding upon the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other, which shall not be unreasonably withheld. No assignment of this Agreement shall be effective until the assignee assumes in writing the obligations of the assigning party and delivers such written assumption to the other original party to this Agreement.

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Use of subconsultants by the ENGINEER or subsidiary or affiliate firms of the ENGINEER for technical or professional services shall not be considered an assignment of a portion of this Agreement, and the ENGINEER shall remain fully responsible for the work performed, whether such performance is by the ENGINEER or subconsultants. No subconsultants shall be used without the written approval of the CITY.

Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the CITY and the ENGINEER.

**ARTICLE IX: INTEGRATION**

These terms and conditions and the Agreement to which they are attached represent the entire understanding of the CITY and the ENGINEER as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing as specified in Article II.

**ARTICLE X: SUSPENSION OF WORK**

The CITY may suspend, in writing, and without cause, all or a portion of the work under this Agreement. The ENGINEER may request that the work be suspended by notifying the CITY, in writing, of circumstances that are interfering with the progress of work. The ENGINEER may suspend work on the project in the event the CITY does not pay invoices when due. The time for completion of the work shall be extended by the number of days work is suspended. If the period of suspension exceeds 90 days, the terms of this Agreement are subject to renegotiation and both parties are granted the option to terminate work on the suspended portion of the project, in accordance with Article XI.

**ARTICLE XI: TERMINATION OF WORK**

The CITY may terminate all or a portion of the work covered by this Agreement for its convenience. Either party may terminate work if the other party fails to substantially perform in accordance with the provisions of this Agreement. Termination of this Agreement is accomplished by 15 days' prior written notice from the party initiating termination to the other. Notice of termination shall be delivered by certified mail with receipt for delivery returned to the sender.

In the event of termination, the ENGINEER shall perform such additional work as is necessary for the orderly filing of documents and closing of the project. The time spent on such additional work shall not exceed 10 percent of the time expended on the terminated portion of the project prior to the effective date of termination. The ENGINEER shall be compensated for work performed prior to the effective date of termination plus the work required for filing and closing as described in this Article. If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement.

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**ARTICLE XII: FORCE MAJEURE**

Neither the CITY nor the ENGINEER 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 or the other's employees and agents.

**ARTICLE XIII: DISPUTE COSTS**

In the event either party brings action to enforce the terms of this Agreement or to seek damages for its breach or arising out of any dispute concerning the terms and conditions hereby created, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs, and expenses, incurred therein, including such costs and fees as may be required on appeal.

**ARTICLE XIV: COURT OF JURISDICTION**

The laws of the State of Oregon shall govern the validity of this Agreement, its interpretation and performance, and other claims related to it. Venue for litigation shall be in Linn County, Oregon.

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**KENNEDY JENKS:**

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Mailing Address*

\_\_\_\_\_  
*City, State, Zip*

\_\_\_\_\_  
*Telephone*

\_\_\_\_\_  
*Corporation Tax No. (If Incorporated)*

\_\_\_\_\_  
*Social Security Number (If Individual)*

**CITY OF LEBANON, OREGON:**

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
**Ron Whitlatch**  
*Print Name*

\_\_\_\_\_  
**City Manager**  
*Title*

**APPROVED AS TO FORM:**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
**John E. Kennedy**  
*Print Name*

\_\_\_\_\_  
**City Attorney**  
*Title*

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**ATTACHMENT 'A'**

**SCOPE OF WORK / 2026 FEE SCHEDULE**