

**CITY OF OREGON CITY
PERSONAL SERVICES AGREEMENT**

MAIN STREET WATERLINE IMPROVEMENTS – 10TH TO 15 (CI 21-007)

This PERSONAL SERVICES AGREEMENT (“Agreement”) is entered into between the CITY OF OREGON CITY (“City”) and **WALLIS ENGINEERING, PLLC** (“Consultant”).

RECITALS

A. City requires services that Consultant is capable of providing under the terms and conditions hereinafter described.

B. Consultant is able and prepared to provide such services as City requires under the terms and conditions hereinafter described.

The parties agree as follows:

AGREEMENT

1. Term. The term of this Agreement shall be from the date the contract is fully executed until **June 30, 2023**, unless sooner terminated pursuant to provisions set forth below. However, such expiration shall not extinguish or prejudice City’s right to enforce this Agreement with respect to (i) breach of any warranty; or (ii) any default or defect in Consultant’s performance that has not been cured.

2. Compensation. City agrees to pay Consultant on a time-and-materials basis for the services required. Total compensation, including reimbursement for expenses incurred, shall not exceed **two hundred forty-nine thousand, twenty-six dollars and sixty-one cents (\$249,026.61)**.

3. Scope of Services. Consultant’s services under this Agreement shall consist of services as detailed in Exhibit A, attached hereto and by this reference incorporated herein.

4. Standard Conditions. This Agreement shall include all of the standard conditions as detailed in Exhibit B, attached hereto and by this reference incorporated herein.

5. Schedule. The components of the project described in the Scope of Services shall be completed according to Term, above.

6. Integration. This Agreement, along with the description of services to be performed attached as Exhibit A and the Standard Conditions to Oregon City Personal Services Agreement attached as Exhibit B, contain the entire agreement between and among the parties, integrate all the terms and conditions mentioned herein or incidental hereto, and supersede all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

7. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, by hand delivery or by electronic means. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

To the City:

City of Oregon City
13895 Fir Street
Oregon City, OR 97045
Attention: John M. Lewis

To Consultant:

WALLIS ENGINEERING, PLLC
215 W. 4th Street, Suite 200
Vancouver, WA 98660
Attention: Jane Vail

Consultant shall be responsible for providing the City with a current address. Either party may change the address set forth in this Agreement by providing notice to the other party in the manner set forth above.

8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this _____ day of _____, 20__.

CITY OF OREGON CITY


By:


John M. Lewis, P.E.

Title: Public Works Director

DATED: 1-7, 20 22

By:


Anthony V. Konkol III

Title: City Manager

DATED: January 6, 20 22

APPROVED AS TO LEGAL SUFFICIENCY:

By:


City Attorney

WALLIS ENGINEERING, PLLC

By:

Jane Vail

Digitally signed by Jane Vail
Date: 2022.01.10 14:02:45 -08'00'

Name: Jane Vail

Title: Principal Engineer

DATED: January 10, 20 22

PROJECT BACKGROUND

This project consists of replacing an existing water system in the City of Oregon City on Main Street between 10th Street and 15th Street. The proposed improvements are listed below:

- Replace the existing water main with approximately 1,740 LF of new 8-inch (or 12-inch if desired by the City) ductile iron water main and appurtenant items such as services, PRVs, hydrants and fire service lines;
- Replace the existing waterlines between Main Street and OR99E on 13th Street and 14th Street. Alternatively, the City may elect to install long water services to serve the properties on these streets in lieu of water main installation.
- Connect the new water main to the existing water mains on all side streets.
- Replace approximately 70 LF of the existing sanitary sewer line with new 8-inch sanitary sewer on 14th Street east of Main Street to remove the existing sewer “whip.”
- Coordinate fire line replacements with existing properties with existing basements.
- Complete surface restoration as required.
- Complete full road width pavement rehabilitation on 14th Street between OR99E and Center Street, and on Main Street between 14th and 15th Street.
- Complete pedestrian ramp improvements at all four corners of 14th and Main Street, and at one corner of 15th and Main Street.
- Provide construction administration and inspection support as requested by the City.

CONTRACT DURATION

Contract term shall be from the date contract is fully executed until June 30, 2023.

PROJECT TEAM

Wallis Engineering will serve as the prime consultant for this project, leading a team of subconsultants to complete all the services identified in the specific scope of work. The project team is listed below, with the responsibilities which they will complete.

<i>Consultant</i>	<i>Responsibilities</i>
Wallis Engineering (Wallis)	Civil Engineering
Compass Land Surveying (Compass)	Surveying
NV5	Geotechnical Engineering
VacX	Utility Design Potholing

TASK 1 PROJECT MANAGEMENT AND ADMINISTRATION

Objective: Provide project management, coordination, and direction of the design team to complete the project. Establish quality control management and designate responsibility of technical work deliverables and products.

Task 1.1 Define Project Objectives

The project manager will define the project goals, locations, design criteria, and the project schedule in coordination with City Staff. These items will be included in the final scope of work and schedule.

Task 1.2 Project Management and Administration

Wallis will provide project management, schedule, coordination, and direction to both City staff and the design team to track project progress and adjust as necessary. The goals, objectives and potential impacts of the project will be confirmed with the City's project manager. Project management and coordination will include the following:

- Manage and update the project design schedule through the duration of the contract.
- Prepare monthly status reports and schedule updates to be included with consultant invoices.
- Coordinate project team meetings and prepare meeting agendas and meeting minutes. This task assumes the following meetings:
 - 50% Design Review Meeting
 - 90% Design Review Meeting
- Coordinate anticipated construction impacts with Trimet.

Task 1.3 Utility Coordination

Communicate with private utility providers to ensure all potential conflicts with proposed work are addressed. Coordination work will include the following:

- Develop a utility contact information list and email project information letters to all utility companies involved to explain nature of the work.
- Coordinate with private utility providers for relocation of existing utilities as necessary.
- Submit applicable plans to the affected private utility providers. Utility Conflict notices will be sent to utilities following the 50% and 90% design submittals.
- Maintain a record of correspondence with utility companies.

Task 1 Assumptions:

- Design phase of the project is assumed to be from January 2022 – September 2022.
- Construction phase of the project is assumed to be from November 2022 – April 2023.
- City project manager will complete all stakeholder coordination, public involvement, and lead all necessary permitting efforts.
- The City will obtain all needed Temporary Construction Easements.
- Two Wallis Engineering staff members will attend each design review meeting. The review meetings are assumed to be no more than two hours each.
- All meetings with City staff will be held at the City's offices or other venue of City's choice.

Task 1 Deliverables:

- Project scope and schedule
- Monthly progress reports will be submitted with invoices and will include a summary of work completed within the invoice month
- Utility contact list and correspondence
- 50% Design Review Meeting Minutes
- 90% Design Review Meeting Minutes

TASK 2 DATA COLLECTION AND EVALUATION

Objective: Collect site and facility information sufficient to analyze the existing system and prepare a comprehensive base map for design.

Task 2.1 Data Collection and Review

Review available background information relating to this project. The anticipated information includes:

- Utility GIS Records
- Water System Master Plan
- As-built drawing information, as available;
- Existing field conditions
- City billing records for service sizes, PRV presence and Backflow Device presence
- Information collected as part of previous work efforts on Main Street

Task 2.2 Field Topographic Survey and Base Map

The underground public utilities in this portion of the project were previously mapped in 2010 by Compass in an earlier project for the City of Oregon City. Since the 2010 mapping, there have been known changes regarding public utility installations. However, there is no available information regarding private utility modifications since the original survey. Following completion of a utility locate request, Wallis and Compass will review the utility markings relative to the original mapping along the corridor to determine the extent of any underground public utility changes. Additional information will be collected and modifications to the original survey will be completed if utility changes from the previous survey are observed. This task assumes that approximately 50% of the existing utilities in the project corridor have been modified since the original survey and will require updated data collection.

New mapping of existing surface and subsurface will be performed at the four corners of the intersection of 14th and Main and at the southwesterly corner of 15th and Main Street to facilitate pedestrian improvement design. Additional mapping will be performed to locate the curb lines and underground public utilities in both 13th Street and 14th Street from Main Street to the easterly border of McLoughlin Blvd. This task will also include full right of way topographic mapping of 14th Street between OR99E and the approximate easterly line of Center Street.

Task 2.2A Additional Field Topographic Survey (Contingency Task)

Task 2.2 above assumes that only minor changes have been made to existing private utilities since the original survey in 2010 was completed. Following review of the utility locates, the City will be notified if it appears that more than 50% of the existing utilities mapped in 2010 require additional survey. This task will only be authorized with written direction of the City.

Task 2.3 Pre-Construction Monumentation Survey

The prior survey of record along the corridor of this project which runs between 10th and 15th Streets was filed in conjunction with the 2010 Main Street Mapping Project as SN 2011-140. Since that time, there have been monumentation changes along the project's limits. Compass will first search for all prior control and monuments of record shown on SN 2011-140 and will also search for any new monuments which have been established along the project corridor.

Following preliminary design, a Pre-Construction Record of Survey will likely be required to be filed with the county surveyor. The purpose of this survey will be to provide a record of all found monuments in the vicinity of proposed construction which may be disturbed or destroyed as a result of said construction. If, after preliminary design, it is determined that there is little to no risk of existing monuments being disturbed by construction, completion and filing of the survey will not be required.

Task 2.4 Geotechnical Investigations and Pavement Design

NV5 will conduct investigations of the existing pavement, provide analysis of collected data and provide pavement rehabilitation recommendations for full width surfacing improvements. Scope of work to include:

- Field locate core exploration locations, request One-Call locates, and obtain permits through the City
- Complete three pavement borings up to 10-feet below ground surface or refusal on Main Street between 10th Street and 15th Street to investigate the pavement and subgrade conditions.
- Conduct laboratory testing of moisture content from one sample from each pavement boring and Atterberg limits test as required.
- Complete dynamic cone penetrometer tests (DCP) at the exploration locations
- Conduct GPR tests in the outside wheel track of the main travel lanes using a 2 GHz truck-mounted horn antenna within the project limits being considered for rehabilitation.
- Review and discuss traffic information and estimates with the project team for each street section
- Estimate 15-, and 20-year pavement design ESAL based on City data and our assumptions
- Estimate required and existing pavement capacity based on traffic information, sub-surface explorations, GPR, and DCP results.
- Provide recommendations for pavement rehabilitation
- Provide recommendations for materials and construction
- Complete a draft and final letter report.

Task 2.5 Existing Basement Research and Evaluation

Review available records and previous investigations to identify existing basements adjacent to the work site. Coordinate access to each basement with property owners and the City to evaluate existing conditions, determine presence of backflow devices and identify fire line replacement needs.

Task 2.6 Subsurface Utility Investigations

VacX will collect information on existing subsurface utilities for up to thirteen (13) locations which will be identified following the 50% Design submittal. Collected information will include depth, size and confirmation of horizontal location. All excavations will be less 8-feet in depth and will be conducted in accordance with City Standards. VacX will provide traffic control plans to the City for approval and will restore excavations by utilizing field mixed controlled density fill and hot mix asphalt.

Task 2 Assumptions:

- All as-built/ record drawing information will be provided by the City.
- City will provide record on water service size, meter size, fire line size, PRV presence and backflow device presence.
- No soil corrosivity investigations are required.
- No more than three (3) existing basements will be evaluated.
- Structural Engineering services will not be required to connect water systems at or near existing basement locations.
- Obtaining a permit from the City, providing traffic control plans and traffic control devices/personnel will be required for all onsite investigations that impact public traffic. All permit fees will be paid by the City.
- Investigation work on Main Street will be allowed between 7:00 AM and 6:00 PM and will require lane closures and other traffic control provisions.

Task 2 Deliverables:

- Base map of project site in AutoCAD 2018+ format.
- Existing basement evaluations
- Pre-Construction Monumentation Survey
- Subsurface utility information data reports
- Draft and Final Pavement Rehabilitation Recommendations Letter

TASK 3 DESIGN

Objective: Provide 50% design, 90% design, and final design contract documents based on City review comments.

Task 3.1 50% Design

Prepare a 50% Plan set and Opinion of Cost. The 50% plan set will include the following:

- Cover
- General Notes and Legend
- Preliminary horizontal and vertical (if needed) alignment for all waterline improvements without callouts
- Preliminary water connection details without callouts
- Preliminary pavement rehabilitation methodology.
- Preliminary pedestrian ramp layouts.
- City standard details

The 50% Design package will be submitted to the City in electronic format.

Task 3.2 90% Design

Based on the 50% submittal review comments provided by the City, Wallis will assemble and submit electronic 90% plans, specifications, and opinion of cost to the City for review. The proposed specifications will be based on a contract bid item format and the “2018 Oregon State Department of Transportation Standard Specifications for Construction.”

The 90% plan set, and all subsequent plan sets, are anticipated to include the following:

Description	Sheets	Running Total
Cover, Drawing Index	1	1
Legend, General Notes, Traffic Control Notes and Phasing	1	2
Typical Sections	1	3
Traffic Control Plans	4	7
Water Plan and Profile Sheet – Main Street	3	10
Water Plan and Profile Sheet – Side Streets	2	12
Water Connection Details	3	15
Sanitary Plan and Profile Sheet – 14 th Street	1	16
Main and 14 th Street Improvements	2	18
Pedestrian Ramp Improvements	5	23
Details	5	28

Task 3.3 Final Design

We will finalize all construction drawings and project specifications and prepare a final opinion of cost based on these final documents. The full-size construction plans will be 22" x 34" with a City of Oregon City title block. The title block will incorporate the Wallis Engineering logo as well as the logos of the design team subconsultants. Plans included in the Contract Documents will be printed at half scale (11" x 17"). Final plans will be delivered to the City in electronic format.

Task 3 Assumptions:

- No easements will be required.
- No water modeling or capacity verification will be completed. Proposed water main sizing will be provided by the City.
- All pavement restoration for utility excavation will be as identified in the City's standard details. Pavement design will not be required for trench restoration.
- All front-end specifications, and City standard general special provisions will be provided by the City.
- All permitting will be completed by the City.
- Traffic control will not require ODOT permit approval.
- Traffic Control Plans will be generated to identify the intent of traffic control configurations for the major work elements. The Contractor will ultimately be responsible to add additional detail to prepared traffic control plans for their implementation during construction.

Task 3 Deliverables:

- Electronic versions of the 50% plans and estimate
- Electronic versions of the 90% plans, specifications, and estimate
- Electronic versions of the final plans, specifications, and estimate

TASK 4 BIDDING AND CONSTRUCTION SERVICES

Objective: Provide bidding assistance, and construction support through the completion of the project.

4.1 Project Bidding and Award

Wallis Engineering will provide bidding services to the City, including responding to bidder's questions and preparing addenda (as needed). Assist the City with the bid opening, evaluate bids, and provide a Recommendation of Award.

4.2 Construction Administration

Wallis Engineering will provide construction administration as follows:

- Conduct the pre-construction meeting with City staff, the contractor, and representatives of the utility companies to effectively communicate those areas of the project which will require special attention during construction.
- Conduct weekly construction meetings with City staff, the contractor, and other affected stake holders as needed. Meeting Agenda and Minutes will be prepared for each weekly meeting.
- Review monthly payment requests by the contractor, verify quantities included in each pay request, and prepare payment recommendations to the City. Complete a final pay estimate at project completion.
- Provide construction management oversight of the Contractor's work schedule and quality, coordinate construction tasks with City, public and other non-agency entities, evaluate field design changes, and negotiate and prepare change orders as necessary to complete the project. The budget for these tasks assumes six hours per week for a twelve-week construction period.

4.3 Construction Engineering and Field Inspection

Wallis Engineering will provide construction engineering and field inspection as follows:

- Provide daily site inspections to monitor the quality and progress of the work. Provide inspector's daily report of construction activities for each day of inspection along with project photos. The budget assumes 24 hours per week for a twelve-week construction period and includes assistance with monthly progress payments and attendance of the weekly meetings. An additional 15 hours is assumed for punch list corrective work and final closeout of the construction. Daily inspection services can be supplemented or replaced by City Staff at the discretion of the City.
- Review and respond to: contractor submittals; shop drawings; requests for information; notifications of differing site conditions; Contractor prepared Quality Control, Quality Assurance plan; Work plans; and completed field testing for conformance to the contract documents. Consult with the City regarding the acceptability of material substitutes or 'as-equal' items proposed by the contractor.
- Provide a final walk-through with the contractor and City staff at the project completion. Provide written punch list to the contractor and recommendation of final acceptance when appropriate.

4.4 Record Drawings

Wallis Engineering will prepare Record Drawings based on as-built information provided by the contractor following construction. Record Drawings will be submitted to the City in electronic format following construction completion.

4.5 Post Construction Monumentation Survey

Compass will complete a Post Record of Surveys as needed based on the proposed improvements, ORS 209.155 and 209.250. Records will be filed with the Clackamas County Surveying office as applicable. This task also includes services to replace any monuments that are disturbed during construction.

If monuments are not disturbed during construction, efforts to replace monuments as described above will not be completed or billed.

Task 4 Assumptions:

- City will distribute the contract documents, maintain a plan holder's list, and distribute addenda as needed.
- Ten weekly construction meetings will be held.
- Wallis Engineering will not attend the bid opening.
- Bidder Question and Response Log will be generated and maintained by the City during bidding.
- Construction Administration hours based the specific tasks described and an additional 6 hours per week for a twelve-week construction schedule to provide general administration.
- Inspection hours based on a twelve-week construction schedule at 24 hours per week with an additional 15 hours allotted for closeout and punch list work.
- Construction staking services will be provided by the Contractor (as needed).
- Quality control testing services and material laboratory analysis will be provided by the Contractor.
- The City's project manager will perform all construction management tasks not specifically included in this scope of work.
- Post-Construction as-built survey will not be performed.

Task 4 Deliverables:

- Pre-Construction Meeting Minutes
- Addenda (as needed)
- Recommendation of Award
- Weekly construction meeting minutes
- Monthly pay estimates and recommendations
- Submittal comments and response log
- Inspector's daily report for each working day of inspection
- Final Punch List and Recommendation of Final Acceptance
- Electronic version of Record Drawings in PDF and AutoCAD version 2018 format
- Post Construction Record of Survey

		EM3	EM2	PE3	SE3	T3	A6	A4	Wallis Labor	Expenses	Subconsultants			Total Cost
											Compass	NV5	VacX	
		\$199.09	\$193.47	\$142.85	\$122.60	\$121.47	\$116.98	\$98.98						
Task 1	Project Management and Administration													
1.1	Define Project Objectives	2	6					1	\$ 1,657.98					\$ 1,657.98
1.2	Project Management and Administration	0	22	0	8	0	5	5	\$ 6,316.94	\$ 65.00	\$ -	\$ -	\$ -	\$ 6,381.94
1.3	Utility Coordination		4	4	16				\$ 3,306.88					\$ 3,306.88
	TASK 1 SUBTOTAL	2	32	4	24	0	5	6	\$ 11,281.80	\$ 65.00	\$ -	\$ -	\$ -	\$ 11,346.80
Task 2	Data Collection and Evaluation													
2.1	Data Collection and Review		4		20				\$ 3,225.88	\$ 35.00 (M)				\$ 3,260.88
2.2	Field Topographic Survey and Base Map		1		4	4			\$ 1,169.75	\$ 35.00 (M)	\$ 39,808.00			\$ 41,012.75
2.2A	<i>Additional Field Topographic Survey (Contingency Task)</i>								\$ -		\$ 8,873.00			\$ 8,873.00
2.3	PreConstruction Monumentation Survey		2			1			\$ 508.41		\$ 3,432.00			\$ 3,940.41
2.4	Geotechnical Investigations and Pavement Design		4		2				\$ 1,019.08			\$ 10,962.00		\$ 11,981.08
2.5	Existing Basement Research and Evaluation		8		12				\$ 3,018.96	\$ 65.00 (M)				\$ 3,083.96
2.6	Subsurface Utility Investigations		2		8				\$ 1,367.74	\$ 65.00 (M)			\$ 23,023.00	\$ 24,455.74
	TASK 2 SUBTOTAL	0	21	0	46	5	0	0	\$ 10,309.82	\$ 200.00	\$ 52,113.00	\$ 10,962.00	\$ 23,023.00	\$ 96,607.82
Task 3	Design													
3.1	50% Design	2	20	28	52	56		2	\$ 21,642.86	\$ 35.00 (M)				\$ 21,677.86
3.2	90% Design	4	24	40	48	36		4	\$ 21,807.28	\$ 35.00 (M)				\$ 21,842.28
3.3	Final Design	2	12	20	20	20		4	\$ 10,854.14					\$ 10,854.14
	TASK 3 SUBTOTAL	8	56	88	120	112	0	10	\$ 54,304.28	\$ 70.00	\$ -	\$ -	\$ -	\$ 54,374.28
Task 4	Bidding and Construction Services													
4.1	Project Bidding and Award		6	8				2	\$ 2,501.58					\$ 2,501.58
4.2	Construction Administration		136		14			2	\$ 28,226.28	\$60.00 (M)				\$ 28,286.28
4.3	Construction Engineering and Field Inspection		24	32	303				\$ 46,362.28	\$ 2,180.00 (M)				\$ 48,542.28
4.4	Record Drawings		4		4	6			\$ 1,993.10					\$ 1,993.10
4.5	Post Construction Monumentation		1						\$ 193.47		\$ 5,181.00			\$ 5,374.47
	TASK 4 SUBTOTAL	0	171	40	321	6	0	4	\$ 79,276.71	\$ 2,240.00	\$ 5,181.00	\$ -	\$ -	\$ 86,697.71
	Project Subtotal	10	280	132	511	123	5	20	\$ 155,172.61	\$ 2,575.00	\$ 57,294.00	\$ 10,962.00	\$ 23,023.00	\$ 249,026.61

Depending on availability, actual staff usage may not match the above estimated hours breakdown. Billing rates for all staff are listed in the Rate Schedule.

FEE SUMMARY	
Wallis Labor	\$ 155,172.61
Wallis Expenses	\$ 2,575.00
<i>(M) = Mileage at current IRS Rate, (P) = Printing</i>	
Subconsultants	
Compass	\$ 57,294.00
NV5	\$ 10,962.00
VacX	\$ 23,023.00
<i>NOTE: Fee includes 10% markup</i>	
TOTAL BUDGET	\$ 249,026.61



RATE SCHEDULE

Rate Schedule good through December, 31, 2022

<u>Title</u>	<u>Range</u>	
Associate Engineer	\$158.59	\$158.59
Senior Engineer	\$217.09	\$217.09
Engineering Manager I - VI	\$185.59	\$213.71
Project Engineer I - IX	\$131.60	\$183.34
Staff Engineer I - IV	\$106.86	\$129.35
Engineering Intern I - III	\$66.36	\$73.11
Designer	\$125.98	\$152.97
Construction Manager	\$140.60	\$140.60
Inspector	\$98.98	\$115.85
Technician I-IV	\$87.74	\$128.22
Administrative I – VI	\$52.86	\$116.98

These hourly rates include in-house office expenses, photocopying, and other incidental items. Mileage will be reimbursed at the current standard IRS rate. Outside expenses will be billed at cost plus 10%.

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

1. Consultant Identification. Consultant shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Consultant's social security number, as City deems applicable.

2. Payment.

(a) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers.

(b) City agrees to pay Consultant within thirty (30) days after receipt of Consultant's itemized statement. Amounts disputed by City may be withheld pending settlement.

(c) City certifies that sufficient funds are available and authorized for expenditure to finance the cost of the services to be provided pursuant to this Agreement.

(d) City shall not pay any amount in excess of the compensation amounts set forth in this Agreement, nor shall City pay Consultant any fees or costs that City reasonably disputes.

3. Independent Consultant Status.

(a) Consultant is an independent consultant and is free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results.

(b) Consultant represents that it is customarily engaged in an independently established business and is licensed under ORS chapter 671 or 701, if the services provided require such a license. Consultant maintains a business location that is separate from the offices of the City and bears the risk of loss related to the business as demonstrated by the fixed price nature of the contract, requirement to fix defective work, warranties provided and indemnification and insurance provisions of this Agreement. Consultant provides services for two or more persons within a 12-month period or routinely engages in advertising, solicitation or other marketing efforts. Consultant makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and

Consultant has the authority to hire or fire persons to provide or assist in providing the services required under this Agreement.

(c) Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law (including applicable City or Metro business licenses as per Oregon City Municipal Code Chapter 5.04). Consultant shall furnish the tools or equipment necessary for the contracted labor or services. Consultant agrees and certifies that:

(d) Consultant is not eligible for any federal social security or unemployment insurance payments. Consultant is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Consultant under this Agreement.

(e) Consultant agrees and certifies that it is licensed to do business in the State of Oregon and that, if Consultant is a corporation, it is in good standing within the State of Oregon.

4. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term by mutual written consent of the parties or by the City upon ten (10) days written notice to the Consultant, delivered by certified mail, email, or in person.

(b) Upon receipt of notice of early termination, Consultant shall immediately cease work and submit a final statement of services for all services performed and expenses incurred since the date of the last statement of services.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of the City provided in this Agreement and relating to defaults by Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

5. No Third-Party Beneficiaries. City and

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

6. Payment of Laborers; Payment of Taxes.

(a) Consultant shall:

(i) Make payment promptly, as due, to all persons supplying to Consultant labor and materials for the prosecution of the services to be provided pursuant to this Agreement.

(ii) Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.

(iii) Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or materials furnished.

(iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to the Consultant under this Agreement and, unless Consultant is subject to back-up withholding, the City will not withhold from such compensation or payments any amount(s) to cover Consultant's federal or state tax obligation.

(v) Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 653.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime.

(b) If the Consultant fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Agreement as such claim becomes due, the City may pay such claim to the person furnishing the labor or services and shall charge the amount of the payment against funds due or to become due to the Consultant by reason of this Agreement.

(c) The payment of a claim in this manner shall not relieve Consultant or Consultant's surety from obligation with respect to any unpaid claims.

(d) Consultant and subconsultants, if any, are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

7. Subconsultants and Assignment.

Consultant shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from the City. The City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to the Consultant.

8. Access to Records. City shall have access to all books, documents, papers and records of Consultant that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

9. Ownership of Work Product; License. All work products of Consultant that result from this Agreement (the "Work Products") are the exclusive property of City. In addition, if any of the Work Products contain intellectual property of Consultant that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Consultant hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Consultant under this Agreement. The parties expressly agree that all works produced (including, but not limited to, any taped or recorded items) pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Consultant shall not publish, republish, display or otherwise use any work or Work Products resulting from this Agreement without the prior written agreement of City.

10. Compliance With Applicable Law.

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Consultant shall comply with all federal, state, and local laws and ordinances applicable to the services to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230 and 279B.270. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

11. Professional Standards. Consultant shall be responsible, to the level of competency presently maintained by others practicing in the same type of services in City's community, for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this authorization.

12. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

13. Indemnity and Insurance.

(a) Indemnity. Consultant acknowledges responsibility for liability arising out of Consultant's negligent performance of this Agreement and shall hold City, its officers, agents, Consultants, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim caused ~~or alleged to be caused~~ by the negligent acts, omissions, activities or services by Consultant, or the agents, Consultants or employees of Consultant provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Consultant certifies that Consultant has qualified for workers' compensation as required by the State of Oregon. Consultant shall provide the Owner, within ten (10) days after execution of this Agreement, a certificate of insurance evidencing

coverage of all subject workers under Oregon's workers' compensation statutes. ~~The insurance certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City.~~ All agents or Consultants of Consultant shall maintain such insurance.

(c) Comprehensive, General, and Automobile Insurance. Consultant shall maintain comprehensive general and automobile liability insurance for protection of Consultant and City and for their directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, ~~including loss of use,~~ and occurring as a result of, ~~or in any way related to,~~ Consultant's operation, each in an amount not less than \$2,000,000 combined, single-limit, per-occurrence/\$4,000,000 annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Consultant.

(d) Errors and Omissions Insurance Consultant shall provide City with evidence of professional errors and omissions liability insurance for the protection of Consultant and its employees, insuring against bodily injury and property damage arising out of Consultant's negligent acts, omissions, activities or services in an amount not less than \$500,000 combined, single limit. Consultant shall maintain in force such coverage for not less than three (3) years following completion of the project. Such insurance shall include contractual liability.

Within ten (10) days after the execution of this Agreement, Consultant shall furnish City a certificate evidencing the dates, amounts, and types of insurance that have been procured pursuant to this Agreement. ~~Consultant will provide for not less than thirty (30) days' written notice to City before the policies may be revised, canceled, or allowed to expire. Consultant shall not alter the terms of any policy without prior written authorization from City.~~ The provisions of this subsection apply fully to Consultant and its Consultants and agents.

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14. Legal Expenses. In the event legal action is brought by City or Consultant 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 attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

15. Severability. The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

16. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

17. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

18. Hierarchy. The conditions contained in this document are applicable to every Personal Services Agreement entered into by the City of Oregon City in the absence of contrary provisions. To the extent there is a conflict, the terms of the Personal Services Agreement will control over the terms of the standard conditions. To the extent there is a conflict between the terms of the standard conditions and any other document, including the scope of services, the terms of the standard conditions shall control those other terms.

19. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the State of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

20. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United

States mail, postage prepaid, or personally delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. Nonwaiver. The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

22. Information and Reports. Consultant shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Consultant shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but shall remain with Consultant. Copies as requested shall be provided free of cost to City.

23. City's Responsibilities. City shall furnish Consultant with all available necessary information, data, and materials pertinent to the execution of this Agreement. City shall cooperate with Consultant in carrying out the work herein and shall provide adequate staff for liaison with Consultant.

24. Arbitration.

All disputes arising out of or under this Agreement shall be timely submitted to nonbinding mediation prior to commencement of any other legal proceedings. The subsequent measures apply if disputes cannot be settled in this manner.

(a) Any dispute arising out of or under this Agreement shall be determined by binding arbitration.

(b) The party desiring such arbitration shall give written notice to that effect to the other party

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and shall in such notice appoint a disinterested person of recognized competence in the field as arbitrator on its behalf. Within fifteen (15) days thereafter, the other party may, by written notice to the original party, appoint a second disinterested person of recognized competence as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third disinterested person of recognized competence, and the three arbitrators shall, as promptly as possible, determine such matter, provided, however, that:

(i) If the second arbitrator is not appointed as described above, then the first arbitrator shall proceed to determine such matter; and

(ii) If the two arbitrators appointed by the parties are unable to agree, within fifteen (15) days after the second arbitrator is appointed, on the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties and, if the parties fail to agree on the selection of the third arbitrator within fifteen (15) days after the arbitrators appointed by the parties give notice, then, within ten (10) days thereafter, either of the parties, on written notice to the other party, may request such appointment by the presiding judge of the Clackamas County Circuit Court.

(c) Each party shall each be entitled to present evidence and argument to the arbitrators. The determination of the majority of the arbitrators or the sole arbitrator, as the case may be, shall be conclusive on the parties, and judgment on the same may be entered in any court having jurisdiction over the parties. The arbitrators or the sole arbitrator, as the case may be, shall give written notice to the parties, stating the arbitration determination, and shall furnish to each party a

signed copy of such determination. Arbitration proceedings shall be conducted pursuant to ORS 33.210 et seq. and the rules of the American Arbitration Association, except as provided otherwise.

(d) Each party shall pay the fees and expenses of the arbitrator appointed by such party and one-half of the fees and expenses of the third arbitrator, if any.

25. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.