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## CITY COUNCIL MEMO

*TOPIC: ST. HELENS DOCK AND WATERWAY MONITORING*

*DATE: 9--2022*

*COUNCIL ACTION REQUEST: DISCUSSION BRIEF/APPROVAL*

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### **Background**

As the City seeks to improve the recreational boating experience at our public docks, Council has approved creation of an Ad-hoc Advisory Committee made up of community members to give feedback and set direction. The committee met monthly and as needed between December 2021 and June 2022 and recommended:

- Municipal code changes to section 8.28 City Docks and waterways
- Installation of a registration kiosk
- Installation of signage
- Monitoring for appropriate dock use through funding and installation of cameras
- Law enforcement partnership with Columbia County Sherriff's Department and shared training by the Oregon State Marine board
- Contract harbor master services

### **Staff Recommendation**

City staff have reviewed the Responsible Boating Ad-Hoc Advisory Committee recommendation and respectfully submits the following personal services contract with the St. Helens Marina, LLC for Harbor Master services for Council approval.

## PERSONAL SERVICES AGREEMENT

This PERSONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into by and between the **City of St. Helens** (the “City”), an Oregon municipal corporation, and **St. Helens Marina LLC**, an Oregon limited liability company (“Contractor”).

### RECITALS

**A.** The City is in need of personal services for monitoring City docks and waterways and enforcing local ordinances, and Contractor represents that it is qualified and prepared to provide such services.

**B.** The purpose of this Agreement is to establish the services to be provided by Contractor and the compensation and terms for such services.

### AGREEMENT

**1. Engagement.** The City hereby engages Contractor to provide services (“Services”) related to the monitoring and enforcement of local ordinances of the City's docks and waterway, and Contractor accepts such engagement.

**2. Scope of Work.** The duties and responsibilities of Contractor shall be as described in Attachment A attached hereto and incorporated herein by reference.

**3. Term.** Subject to the termination provisions of Section 8 of this Agreement, this Agreement shall commence once executed by both parties and shall terminate upon expiration of one (1) year. The City reserves the exclusive right to extend the contract for a period of two (2) years in one (1) year increments. Such extensions shall be in writing with terms acceptable to both parties. Any increase in compensation for the extended term shall be as agreed to by the parties but shall not exceed five percent (5%) of the then-current fees.

**4. Compensation.** The terms of compensation for the initial term shall be as provided in Attachment C.

**5. Payment.**

**5.1** The City agrees to pay Contractor for and in consideration of the faithful performance of the Services, and Contractor agrees to accept from the City as and for compensation for the faithful performance of the Services, the fees outlined in Attachment C, except that the hourly fee shall include all local travel, local telephone expense, computer expense, and routine document copying. Reimbursable expenses shall be billed at cost without markup and shall include travel and related expenses in compliance with the City’s travel and expense policy, reproduction of documents or reports with prior written approval, and long-distance telephone expenses.

**5.2** Contractor shall make and keep reasonable records of work performed pursuant to this Agreement and shall provide detailed monthly billings to the City. Following approval by the City Administrator, billings shall be paid in full within thirty (30) days of receipt thereof. The City shall notify Contractor of any disputed amount within fifteen (15) days from receipt of the invoice, give reasons for the objection, and promptly pay the undisputed amount. Disputed amounts may be withheld without penalty or interest pending resolution of the dispute.

**5.3** The City may suspend or withhold payments if Contractor fails to comply with any requirement of this Agreement.

**5.4** Contractor is engaged by the City as an independent contractor in accordance with the standards prescribed in ORS 670.600. Contractor shall not be entitled to any benefits that are provided by the City to City employees.

**5.5** Any provision of this Agreement that is held by a court to create an obligation that violates the debt limitation provision of Article XI, Section 9 of the Oregon Constitution shall be void. The City's obligation to make payments under this Agreement is conditioned upon appropriation of funds pursuant to ORS 294.305 through 294.565.

**6. Notices.** All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

**CITY:** City of St. Helens  
Attn: City Administrator  
265 Strand Street  
St. Helens OR 97051

**CONTRACTOR:** **St. Helens Marina LLC**  
Attn: Brad Hendrickson  
134 N. River Street  
St. Helens, OR 97051

When so addressed, such notices, bills and payments shall be deemed given upon deposit in the United States mail, postage-prepaid.

## **7. Insurance.**

**7.1** At all times during the term of this Agreement, Contractor shall carry, maintain and keep in full force and effect a policy or policies of insurance as specified in Attachment B attached hereto and incorporated herein by reference.

**7.2** All insurance policies shall provide that the insurance coverage shall not be canceled or reduced by the insurance carrier without thirty (30) days' prior written notice to

the City. Contractor agrees that it will not cancel or reduce said insurance coverage without the written permission of City.

**7.3** Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, the City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon. If the City procures such insurance, the City may charge the cost against any moneys due Contractor hereunder or for any other contract.

**7.4** At all times during the term of this Agreement, Contractor shall maintain on file with the City a Certificate of Insurance or a copy of actual policies acceptable to the City showing that the aforesaid policies are in effect in the required coverages. The policies shall contain an endorsement naming the City, its council members, officers, employees and agents, as additional insureds (except for the professional liability and workers' compensation insurance).

**7.5** The insurance provided by Contractor shall be primary to any coverage available to the City. The insurance policies (other than workers' compensation) shall include provisions for waiver of subrogation. Contractor shall be responsible for any deductible amounts outlined in such policies.

## **8. Termination.**

**8.1** Termination for Cause. City may terminate this Agreement effective upon delivery of written notice to Contractor under any of the following conditions:

**8.1.1** If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of service. This Agreement may be modified to accommodate a reduction in funding.

**8.1.2** If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.

**8.1.3** If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, suspended, revoked, or not renewed.

**8.1.4** If Contractor becomes insolvent, if a voluntary or an involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

**8.1.5** If Contractor is in breach of this Agreement, and such breach is not remedied as contemplated by Section 8.2 of the Agreement.

## **8.2**     Breach of Agreement

**8.2.1** Contractor shall remedy any breach of this Agreement within the shortest reasonable time after Contractor first has actual notice of the breach or City notifies Contractor of the breach, whichever is earlier. If Contractor fails to remedy a breach within three (3) working days of its actual notice or receipt of written notice from the City, City may terminate that part of the Agreement affected by the breach upon written notice to Contractor, may obtain substitute services in a reasonable manner, and may recover from Contractor the amount by which the price for those substitute services exceeds the price for the same services under this Agreement.

**8.2.2** If the breach is material and Contractor fails to remedy the breach within three (3) working days of receipt of written notice from the City, City may declare Contractor in default, terminate this Agreement and pursue any remedy available for a default.

**8.2.3** Pending a decision to terminate all or part of this Agreement, City unilaterally may order Contractor to suspend all or part of the services under this Agreement. If City terminates all or part of the Agreement pursuant to this Section 8.2, Contractor shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Agreement and later orders Contractor to resume those services after determining Contractor was not at fault, Contractor shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

**8.2.4** In the event of termination of this Agreement due to the fault of the Contractor, City may immediately cease payment to Contractor, and when the breach is remedied, City may recover from Contractor the amount by which the price for those substitute services exceeds the price for the same services under this Agreement, along with any additional amounts for loss and damage caused to the City by the breach, and withhold such amounts from amounts owed by City to Contractor. If the amount due Contractor is insufficient to cover City's damages due to the breach, Contractor shall tender the balance to City upon demand.

**8.3**     Termination for Convenience. City may terminate all or part of this Agreement at any time for its own convenience by providing three (3) days written notice to Contractor. Upon termination under this paragraph, Contractor shall be entitled to compensation for all services properly rendered prior to the termination, including Contractor's and sub consultants reasonable costs actually incurred in closing out the Agreement. In no instance shall Contractor be entitled to overhead or profit on work not performed.

**9.     No Third-Party Rights.** This Agreement shall not create any rights in or inure to the benefit of any parties other than the City and Contractor.

**10.    Modification.** Any modification of the provisions of this Agreement shall be set forth in writing and signed by the parties.

**11. Waiver.** A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach. All waivers shall be done in writing.

**12. Indemnification.**

**12.1 Liability of Contractor for Claims Other Than Professional Liability.** For claims for other than professional liability, Contractor shall defend, save and hold harmless City, its officers, agents and employees from all damages, demands, claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities or omissions of Contractor under this Agreement. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Contractor unrelated to the quality of professional services provided by Contractor.

**12.2 Liability of Contractor for Claims for Professional Liability.** For claims for professional liability, Contractor shall save, and hold harmless City, its officers, agents and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor in the performance of professional services under this Agreement. A claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly from the quality of the professional services provided by Contractor, regardless of the type of claim made against the City.

**12.3** Contractor and the officers, employees, agents and subcontractors of Contractor are not agents of the City, as those terms are used in ORS 30.265.

**13. Governing Laws.** This Agreement shall be governed by the laws of the State of Oregon.

**14. Compliance with Law.**

**14.1** Contractor shall comply with all applicable federal, state and local statutes, ordinances, administrative rules, regulations and other legal requirements in performance of this Agreement.

**14.2** Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the services provided for in the Agreement and shall be responsible for such payment of all persons supplying such labor or material to any subcontractor.

**14.3** Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Agreement.

**14.4** Contractor shall not permit any lien or claim to be filed or prosecuted against the City or its property on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien or claim so filed or prosecuted.

**14.5** Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617.

**14.6** Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

**14.7** No person may be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

**14.7.1** Either:

**14.7.1.1** For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

**14.7.1.2** For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

**14.7.2** For all work performed on Saturday and on any legal holiday specified in ORS 279B.020;

**14.7.3** Contractor shall pay employees for overtime work performed under the Agreement in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq.).

**14.8** The Contractor must give notice to employees who work on this Agreement in writing, either at the time of hire or before commencement of work on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.

**14.9** All subject employers working under the Contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126.

**14.10** All sums due the State Unemployment Compensation Fund from the Contractor or any subcontractor in connection with the performance of the Agreement shall be promptly so paid.

**14.11** Contractor certifies compliance with all applicable Oregon tax laws, in

accordance with ORS 305.385.

**14.12** Contractor certifies that it has not and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055. Without limiting the foregoing, Contractor 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, (iv) ORS 659.425, (v) all regulations and administrative rules established pursuant to those laws; and (vi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

**14.13** The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600.

**14.14** Contractor shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of City in connection with this Agreement in violation of ORS chapter 244.

**14.15** Contractor is a “subject employer,” as defined in ORS 656.005, and shall comply with ORS 656.017.

**14.16** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender, age, national origin, physical or mental disability, or disabled veteran or veteran status in violation of state or federal laws.

**14.17** Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.

**14.18** Any other condition or clause required by law to be in this Agreement shall be considered included by this reference.

**15. Confidentiality.** Contractor shall maintain the confidentiality, both external and internal, of that confidential information to which it is exposed by reason of this Agreement. Contractor warrants that its employees assigned to this Agreement shall maintain necessary confidentiality.

**16. Publicity.** Contractor shall not use any data, pictures, or other representations of the City in its external advertising, marketing programs, or other promotional efforts except with prior specific written authorization from the City.

**17. Succession.** This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and such parties’ partners, successors, executors, administrators and assigns.



**18. Assignment.** This Agreement shall not be assigned by Contractor without the express written consent of the City. Contractor shall not assign Contractor's interest in this Agreement or enter into subcontracts for any part of the Services without the prior written consent of the City.

**19. Mediation/Dispute Resolution**

**19.1** Should any dispute arise between the parties to this Agreement it is agreed that such dispute will be submitted to a mediator prior to any arbitration or litigation, and the parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and, only in the event said mediation efforts fail, through litigation or binding arbitration. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in the City of St. Helens, unless both parties agree in writing otherwise. If arbitration is selected by the parties, the parties shall exercise good faith efforts to select an arbitrator who shall be compensated equally by both parties. Venue for any arbitration shall be the City of St. Helens. Venue for any litigation shall be the Circuit Court for Columbia County.

**20. Attorney Fees.** If legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees, expert fees and costs incurred therein at arbitration, trial and on appeal.

**21. Records, Inspection and Audit by the City.**

**21.1** Contractor shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least three years after City makes final payment on this Agreement and all other pending matters are closed.

**21.2** Services provided by Contractor and Contractor's performance data, financial records, and other similar documents and records of Contractor that pertain, or may pertain, to the Services under this Agreement shall be open for inspection by the City or its agents at any reasonable time during business hours. Upon request, copies of records or documents shall be provided to the City free of charge.

**21.3** The City shall have the right to inspect and audit Contractor's financial records pertaining to the Services under this Agreement at any time during the term of this Agreement or within three (3) years after City makes final payment on this Agreement and all other pending matters are closed.

**21.4** This Section 21 is not intended to limit the right of the City to make inspections or audits as provided by law or administrative rule.

**22. Force Majeure.** Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood,

epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

**23. Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the Services described herein.

**24. Severance.** If any provision of this Agreement is held to be invalid, it will not affect the validity of any other provision. This Agreement will be construed as if the invalid provision had never been included.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be executed by its duly authorized undersigned agent, and Contractor has executed this Agreement on the date written below.

**CITY:**

**CITY OF ST. HELENS**

Council Meeting Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR:**

**ST. HELENS MARINA LLC,**

an Oregon limited liability company

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney

**ATTACHMENT A**  
**Scope of Work**

- Oversees and directs monitoring of City docks and waterways and operations.
- Coordinates and maintains safe and orderly boating traffic.
- Enforces applicable ordinances and ensures enforcement of laws, regulations, and policies concerning City docks and waterways; coordinating harbor police force to assist with this enforcement.
- Participates in training related to new or revised ordinances; work with City regarding issues with current ordinances and recommend potential changes.
- Analyzes City docks and waterways and recommends modifications that will improve safety and efficiency of the area.
- Monitors dock kiosk to ensure proper functioning for vessel registration.
- Maintains records including reports of harbor activities and filed incident reports.
- Maintains effective working relationships with Owner/operators, City staff, marina managers and the public.
- Performs other related duties as assigned.

## ATTACHMENT B INSURANCE REQUIREMENTS

Contractor and its subcontractors shall maintain insurance acceptable to the City in full force and effect throughout the term of this Contract. It is agreed that any insurance maintained by the City shall apply in excess of, and not contribute toward, insurance provided by Contractor. The policy or policies of insurance maintained by Contractor and its subcontractors shall provide at least the following limits and coverage:

TYPE OF INSURANCE	LIMITS OF LIABILITY		REQUIRED FOR THIS CONTRACT
<b>General Liability</b>	Each occurrence General Aggregate Products/Comp Ops Aggregate Personal and Advertising Injury	\$1,000,000 \$2,000,000 \$2,000,000 \$1,000,000 w/umbrella or \$1,500,000 w/o umbrella	YES/NO
Please indicate if Claims Made or Occurrence			
<b>Automobile Liability</b>	Combined Single – covering any vehicle used on City business	\$2,000,000	YES/NO
<b>Workers' Compensation</b>	Per Oregon State Statutes If workers compensation is not applicable please initial here _____. State the reason it is not applicable: _____		YES/NO
<b>Professional Liability</b>	Per occurrence  Annual Aggregate	\$500,000 or per contract \$500,000 or per contract	YES/NO

Contractor's general liability and automobile liability insurance must be evidenced by certificates from the insurers. The policies shall name the City, its officers, agents and employees, as additional insureds and shall provide the City with a thirty (30)-day notice of cancellation.

Workers' compensation insurance must be evidenced by a certificate from the insurer. The certificate need not name the City as an additional insured, but must list the City as a certificate holder and provide a thirty (30)-day notice of cancellation to the City.

Professional liability insurance must be evidenced by a certificate from the insurer. The certificate need not name the City as an additional insured.

Certificates of Insurance shall be forwarded to:

City Administrator  
City of St. Helens  
265 Strand Street  
St. Helens, OR 97051

Contractor agrees to deposit with the City, at the time the executed Contract is returned, Certificates of Insurance and Binders of Insurance if the policy is new or has expired, sufficient to satisfy the City that the insurance provisions of this Agreement have been complied with and to keep such insurance in effect and the certificates and/or binders thereof on deposit with the City during the entire term of this Agreement. Such certificates and/or binders must be delivered prior to commencement of the Services.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury or loss caused by negligence or neglect connected with this Agreement.

**ATTACHMENT C**  
**Terms of Compensation**

**Initial term:**

<b>October 2022 – May 2023</b>	<b>\$1,000 monthly</b>
<b>June 2023- September 2023</b>	<b>\$2,000 monthly</b>

**Method of procurement:** Direct appointment per St. Helens public contracting code 2.04.120(3)(e) as a personal services agreement not exceeding \$50,000 per year or \$150,000 over the full term (Initial Term of 1 year plus 2 renewal options of 1 year each).

Personal service contracts include those with an independent contractor predominantly for services that require special training, skill, unique/specialized knowledge and for which the quality of the service depends on the attributes that are unique to the service provider.