

City of St. Helens
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 **Kittelson & Associates, Inc.** (“Contractor”).

RECITALS

A. The City is in need of consulting services to assist with **Oregon Community Paths Grant application and implementation** and Contractor 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 **Oregon Community Paths Program** and Contractor accepts such engagement. The principal contact for Contractor shall be Matthew Bell, phone 503-535-7435, email mbell@kittelson.com.

2. Scope of Work. The duties and responsibilities of Contractor, including a schedule of performance, shall be as described in Attachment A attached hereto and incorporated herein by reference.

3. Term. Subject to the termination provisions of Section 11 of this Agreement, this Agreement shall commence once executed by both parties and shall terminate on August 1, 2024. 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 A.

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. Contractor’s cost for approved sub-consultants may be marked up a maximum of five percent (5%) by Contractor for management and handling 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 requirements 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. Document Ownership. Upon acceptance of the Services and payment for such Services by the City, all work products, including, but not limited to, documents, drawings, papers, computer programs and photographs, performed or produced by Contractor for the benefit of the City under this Agreement shall become the property of the City. Any reuse or alteration of any work produced under this Agreement, except as contemplated herein, shall be at the City's sole risk.

7. 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: Kittelson & Associates
Attn: Matt Bell
851 SW 6th Avenue, Suite 600
Portland OR 97204

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

8. Standard of Care. Contractor shall comply with applicable standards of professional care in the performance of the Services. Contractor shall prepare materials and deliverables in accordance with generally accepted standards of professional practice for the intended use of the project.

9. Consequential Damages. Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by either party's breach of contract, willful misconduct, negligent act or omission, or other wrongful act.

10. Insurance.

10.1 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.

10.2 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.

10.3 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 shall retain any cost incurred for same from moneys due Contractor hereunder.

10.4 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 amounts. The policies shall contain an endorsement naming the City, its officers, employees and agents, as additional insureds (except for the professional liability and workers' compensation insurance).

10.5 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.

11. Termination. Either party may terminate this Agreement upon seven (7) days' written notice if one of the following occurs: (a) the other party fails to substantially perform in accordance with the terms of this Agreement; or (b) the City, in its sole discretion, decides to abandon the project. If either party terminates this Agreement, Contractor shall receive compensation only for Services actually performed up to the date of termination.

12. 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.

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

14. Waiver. A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

15. Indemnification. 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. Contractor shall defend, indemnify and hold harmless the City and its officers, employees,

elected officials, volunteers and agents from any and all claims for injury to any person or damage to property caused by the negligence or other wrongful acts, omissions, or willful misconduct of Contractor or officers, employees, agents, or subcontractors of Contractor. Contractor shall not be responsible for claims caused by the negligence or other wrongful acts or omissions of the City or the City's officers, employees, or agents.

16. Governing Laws. This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court for Columbia County, Oregon.

17. Compliance with Law.

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

17.2 Contractor shall comply with applicable provisions of ORS 279B.020, 279B.220, 279B.225, 279B.230 and 279B.235. Pursuant to ORS 279B.235, any person employed by Contractor who performs Services shall be paid at least time and a half pay for all overtime in excess of forty (40) hours in any one (1) week, except for persons who are excluded or exempt from overtime pay under ORS 653.010 through 653.261 or under 29 USC Sections 201 through 209.

17.3 Contractor is a "subject employer," as defined in ORS 656.005, and shall comply with ORS 656.017.

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

17.5 Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement. [Business License No. _____]

18. 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.

19. 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.

20. 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.

21. 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.

22. Default.

22.1 A party will be in default under this Agreement if that party fails to comply with any provision of this Agreement within ten (10) days after the other party gives written notice specifying the breach. If the breach specified in the notice cannot be completely cured within the ten (10)-day period, a default will not occur if the party receiving the notice diligently begins curative action within the ten (10)-day period and proceeds to cure the breach as soon as practicable.

22.2 Notwithstanding Subsection 22.1, the City may declare a default immediately by written notice to Contractor if Contractor intentionally or repeatedly breaches material provisions of this Agreement or if Contractor's breach of contract creates unreasonable risk of injury to any person or damage to property.

22.3 Should a dispute arise between the parties to this Agreement, it is agreed that such dispute will be submitted to a mediator prior to any litigation. The parties shall exercise good-faith efforts to select a mediator who shall be compensated equally by both parties. Mediation shall be conducted in St. Helens, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good-faith efforts to resolve disputes covered by this section through the mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, a mediator shall be appointed by the presiding judge of the Circuit Court of the State of Oregon for Columbia County upon request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this section. Nothing in this section shall preclude a party from seeking equitable relief to enjoin a violation of this Agreement.

22.4 If a default occurs, the party injured by the default may terminate this Agreement and enforce any remedies available under Oregon law. Litigation shall be conducted in the Circuit Court of the State of Oregon for Columbia County. Litigation initiated by the City must be authorized by the St. Helens City Council.

23. 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 and costs incurred herein at trial and on appeal.

24. Inspection and Audit by the City.

24.1 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.

24.2 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 two (2) years following the termination of this Agreement.

24.3 This Section 24 is not intended to limit the right of the City to make inspections or audits as provided by law or administrative rule.

25. 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.

26. 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 in duplicate originals by its duly authorized undersigned agents, and Contractor has executed this Agreement on the date written below.

CITY:

CONTRACTOR:

CITY OF ST. HELENS

KITTELSON & ASSOCIATES, INC.

Council Meeting Date: 01/06/20

Signature: _____

Signature:  _____

Print: _____

Print: Wayne Kittelson

Title: _____

Title: Principal

Date: _____

Date: 12/21/2020

ATTACHMENT A
Scope of Work & Terms of Compensation



851 SW 6th AVENUE, SUITE 600
PORTLAND, OR 97204
P 503.228.5230 F 503.273.8169

EXHIBIT A – SCOPE OF WORK

This scope of work will provide the city with support on their upcoming Oregon Community Paths (OCP) grant application. The tasks identified below reflect our discussions in October and November 2020.

Project Management

- Participate in weekly virtual conference calls to coordinate with the City (up to 2)
- General project administration

OCP Grant Application

- Develop a map illustrating the project location (Task 4.1a)
- Determine if the project improves walking/biking in a transportation-disadvantaged area (Task 5.1)
 - Prepare a map illustrating Transportation Disadvantaged Index (TDI) information for the project area
 - Identify the TDI characteristics for the project area (e.g. percent of non-white, youth senior, low income, etc.)
 - Determine the TDI score and confirm with ODOT
- Describe how the project addresses the needs of transportation-disadvantaged residents (Task 5.2)
- Determine if the project addresses/mitigates a safety barrier to walking, biking and other forms of non-motorized transportation (Task 5.3)
 - Obtain and review the five most recent years of crash data available for the project area
 - Identify the location, type, and severity of bike and ped-related crashes
 - Identify Crash Risk Factors for the project area
- Provide a summary of the public outreach plan (Task 6.5)
- Determine if the design approach is consistent with state guidelines (Task 7.3)
- Describe design approach (Task 7.4)

- Determine if the property is owned or if there is an easement (Task 7.5)
 - Prepare maps illustrating property and right-of-way lines
- Determine if the path will go through a restricted area and would require a special-use permit (Task 7.6)
 - Prepare maps illustrating existing zoning and land use
 - Review land City and County land use code
- Prepare a project schedule by task

Project Budget Form

Project Name: St Helens OCP Grant Application
 Project Manager: CAD
 KAI Project Number: 25719.P
 Date: Dec 18, 2020

LABOR ESTIMATE - St Helens OCP Grant Application

| Task | Notes | Staff | Wright, Susan | Bell, Matthew | Dartnell, Camilla | Sommerville, Jon | | | | | WORK TASK/ TASK HOURS | WORK TASK/ TASK COST |
|-------------|--|-------|---------------|---------------|-------------------|------------------|---|---|---|---|--------------------------|-------------------------|
| | | | SLY | MJB | CAD | JKS | | | | | | |
| 001 | Project Management | | | | | | | | | | | |
| | Weekly conference calls (2) | | | 1 | 1 | | | | | | 2 | \$300 |
| | Project administration | | | 1 | | | | | | | 1 | \$174 |
| | Reimbursable Expense | | | | | | | | | | | \$0 |
| | Task #001 - Subtotal | | 0 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 3 | \$474 |
| 002 | OCP Grant Application | | | | | | | | | | | |
| | Project map | | | | 1 | 2 | | | | | 3 | \$397 |
| | TDI Information (map, characteristics, score) | | | | 2 | | | | | | 2 | \$251 |
| | TD description | | | 0.5 | 1 | | | | | | 1.5 | \$213 |
| | Safety Information (crash data, crash risk factors) | | | | 2 | | | | | | 2 | \$251 |
| | Pulic Outreach | | | 1.5 | | | | | | | 1.5 | \$261 |
| | Design Approach (state guidelines, description) | | | 1 | | | | | | | 1 | \$174 |
| | Property information (property and right-of-way map) | | | | 0.5 | 1 | | | | | 1.5 | \$199 |
| | Restricted area information (land-use and zoning map, code review) | | | | 1.5 | 1 | | | | | 2.5 | \$324 |
| | Project schedule | | | 1.5 | | | | | | | 1.5 | \$261 |
| | Revisions | | | 1 | 1 | | | | | | 2 | \$300 |
| | Reimbursable Expense | | | | | | | | | | | \$0 |
| | Task #002 - Subtotal | | 0 | 5.5 | 9 | 4 | 0 | 0 | 0 | 0 | 18.5 | \$2,632 |
| TOTAL HOURS | | | 0 | 7.5 | 10 | 4 | 0 | 0 | 0 | 0 | | |
| LABOR RATE | | | \$250.00 | \$174.12 | \$125.71 | \$135.83 | | | | | | |
| LABOR COST | | | \$0 | \$1,306 | \$1,257 | \$543 | | | | | | |
| | | | | | | | | | | | TOTAL HOURS | TOTAL LABOR |
| | | | | | | | | | | | 22 | \$3,106 |

Rates shown above are for budgeting purposes only. Additional staff may be billed at the time services are performed.

| | |
|-----------------------------|---------|
| TOTAL REIMBURSABLES | \$0 |
| TOTAL KAI FEES | \$3,106 |
| TOTAL SUB FEES | \$0 |
| TOTAL PROJECT BUDGET | \$3,106 |



City of St. Helens
OCP Grant Application Rate Schedule
As of December 2020

| Classification | Hourly Rate | Overhead @ 203.35% | Profit @ 12% | Hourly Billing Rate* |
|------------------------------------|--------------------|---------------------------|---------------------|-----------------------------|
| Senior Principal Engineer/Planner | \$77.97 | \$158.55 | \$28.38 | \$264.90 |
| Principal Engineer/Planner | \$66.01 | \$134.22 | \$24.03 | \$224.25 |
| <i>Susan Wright</i> | \$63.78 | \$129.70 | \$23.22 | \$216.69 |
| Associate Engineer/Planner | \$57.08 | \$116.06 | \$20.78 | \$193.92 |
| Senior Engineer/Planner | \$48.78 | \$99.19 | \$17.76 | \$165.72 |
| <i>Matt Bell</i> | \$51.25 | \$104.22 | \$18.66 | \$174.12 |
| Engineer/Planner | \$37.78 | \$76.83 | \$13.75 | \$128.36 |
| <i>Camilla Dartnell</i> | \$37.00 | \$75.24 | \$13.47 | \$125.71 |
| Transportation Analyst | \$31.35 | \$63.75 | \$11.41 | \$106.51 |
| Technician I | \$26.71 | \$54.30 | \$9.72 | \$90.73 |
| Technician II | \$33.65 | \$68.43 | \$12.25 | \$114.34 |
| Senior Technician | \$39.92 | \$81.18 | \$14.53 | \$135.64 |
| <i>Jon Sommerville</i> | \$39.98 | \$81.30 | \$14.55 | \$135.83 |
| Associate Technician | \$46.97 | \$95.51 | \$17.10 | \$159.57 |
| Office Support | \$24.47 | \$49.75 | \$8.91 | \$83.12 |
| Software Technician | \$22.66 | \$46.08 | \$8.25 | \$76.99 |
| Data Analyst / Software Technician | \$34.05 | \$69.24 | \$12.39 | \$115.69 |
| Data Scientist/Developer | \$45.40 | \$92.32 | \$16.53 | \$154.25 |
| Senior Data Scientist/Developer | \$59.07 | \$120.12 | \$21.50 | \$200.69 |

* Average classification rates by category are shown above along with actual rates for key personnel. Actual wage rates will be invoiced, overhead and profit will be locked for the duration of the contract.

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

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.

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 Contract 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 Contract. Such certificates and/or binders must be delivered prior to commencement of the Work.

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 Contract.