

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 **Arciform** (“Contractor”).

RECITALS

A. The City is in need of design services for the Utility Billing/Court at 275 Strand Street (the Bennett Building) 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 design services at 275 Strand Street and Contractor accepts such engagement. The principal contact for Contractor shall be Anne De Wolf, phone 503-890-8284, email anne@arciform.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 September 16, 2021. 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: Arciform
Attn: Anne De Wolf
2303 N. Randolph Ave.
Portland, OR 97227

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

ARCIFORM

Council Meeting Date: 09/16/20

Signature: _____

Signature: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A
Scope of Work

See attached.

ARCIFORM

design | restore | remodel

August 26th, 2020

The City of St. Helens – City Hall
265 Strand St.
St. Helens, OR 97051

Jenny Dimsho - Associate Planner
Phone: 503-366-8207
E-mail: jdimsho@ci.st-helens.or.us

Arciform's Letter of Agreement – The Arciform Way

This Letter of Agreement will serve as the contract between Arciform LLC (Arciform) and The City of St. Helens (Client) in connection with the projects in the home of Client. The information contained in this agreement supersedes plans, specifications (specs) or other previous agreements.

Payment Methods: Client will pay Arciform with cash, check or credit card. Credit cards are accepted with the addition of a 3% processing fee on any payment processed.

Fee Schedule: For all Time and Material (T&M) services rendered by Arciform, the following fee schedule will be used:

- | | |
|--|----------------|
| ▪ Delivery Driver | \$45/hr |
| ▪ Carpenter I, II, III and Painter | \$58/hr |
| ▪ Assistant to Design | \$65/hr |
| ▪ Lead Carpenter, Junior Designer and Contract Coordinator | \$73/hr |
| ▪ Project Manager, Design Associate, Drafter and Spec Writer | \$95/hr |
| ▪ Designer and Project Developer | \$120/hr |
| ▪ Senior Designer | \$135/hr |
| ▪ Principal Designer and Principal Project Developer | \$180/hr |
| ▪ Materials and Subcontractors | Cost plus 25%. |
1. We will do a site measure of the façade with a storefront specialist from Versatile Wood Products.
 2. We will draft an as-built elevation and sections of the façade.
 3. We will develop two options (plan A & plan B) for the façade based on the sketches and the feedback you provided and additional a la carte items.
 4. Next we will meet and show you our ideas and study our options via Zoom where we can share our screen.
 5. Once you feel comfortable with the direction we are going, we will do an estimate and confer with you again.
 6. Our estimating team will outline a fixed price workorder tailored to your scope.
 7. We will present the work order.
 8. You will sign, submit for permits and construction begins.

The estimated range is \$4,500.00 to \$6,500.00 to do the design and estimating based on this scope of work.

Rate Increase: Client acknowledges that the hourly rates stated are subject to periodic increases. Written notice of any change will be provided prior to the new billing cycle to Client. In the event of a change, the new rate will only apply to work performed after the date of the rate change.

Billable Services: T&M billable services include but are not limited to: research; the documentation of existing conditions; design development and documentation; finish and fixture selections and specifications; budget review, scope development; correspondence between all involved parties; site assessments; visits with government entities and revisions per government entities' requirements; printing; project development; supervision during construction; material procurement; managing Client supplied materials and labor; actual labor; and travel time outside of a 15 mile radius from our office. Timecards are available upon request and by appointment.

Third Party Expenses: Arciform may make payments to third parties on Client's behalf. Companies providing work of this type are directly contracted by Client. Although Client is responsible for these expenses, Arciform will include charges without mark-up on invoices for the following: Postage, Printing, Permits, Engineering, Landscape design, Geotech, Surveyors and Government fees.

Estimates for T&M work: While Arciform will make every attempt to work quickly and efficiently, the amounts stated are estimates only. Actual amounts may be more or less depending on various work conditions, requests by Client, code requirements or project scope changes.

Work Orders: Work orders will be created to outline the design or construction work to be performed by Arciform. In the event that there are any changes or deviations in the work requested by Client and/or hidden or unforeseen conditions, including but not limited to pest, dry-rot, which require additional work and/or material by Arciform, a work order will be approved by Client and Arciform. Be aware that any work order, or the discussion of a possible work order, can and will delay the completion date of the project and require an additional deposit. Work orders are either fixed price or T&M. Client agrees that, if two parties sign, either of them may approve a work order, and that approval will be binding on both. Work orders can also be approved via standard e-mail by either party. Client recognizes that purchasing of job related material and fixtures may begin immediately after signing the work order. Any client driven changes to material/fixture selections may incur restocking fees or full reimbursement to Arciform for non-returnable items.

Payment: Invoices will be delivered every two weeks for T&M work. In the event Client fails to make any payment due, Arciform may terminate work without breach of contract pending payment or resolution of any dispute. Payments not received within 14 days of the invoice date are considered delinquent and will incur a late charge of \$50 per occurrence and bear a penalty of interest at an annual percentage rate (APR) of 18%, assessed on a daily basis on the overdue balance. If an invoice remains unpaid for more than 30 days, Arciform reserves the right to apply the retainer and/or deposit to the unpaid balance. Payments not received within 45 days of the invoice date will automatically start the process of placing a lien on the property. Should collection of delinquent payments become necessary, Client shall pay reasonable costs incurred by Arciform to recover overdue balances and interest including but not limited to fees assessed by collection agencies, attorney fees, costs of preparing and filing property liens and court costs regardless of whether a suit or action is instituted.

Arbitration: If Client disagrees with the amount of Arciform's fee, please contact the responsible team member. Typically, Arciform can resolve such disagreements satisfactorily with little inconvenience or formality. In the event a fee dispute is not readily resolved; Client has the right to request arbitration in the jurisdictions in which Arciform practices based on the rules of the American Arbitration Association. Arciform agrees to participate fully in that process. The liability of Arciform for breach of contract or negligence shall be limited to the fee charged on the project.

Plans: For quality control, Arciform reserves the right to judge the document sets complete for construction. All original drawings, photographs, renderings, materials, and samples supplied by Arciform will remain its property and will be retained by Arciform. After final payment has been received, Arciform will provide PDFs of work performed. It is not Arciform's or subcontractors' responsibility to review work (Architectural plans and plan details) generated by others outside of the employment of Arciform.

Hazardous: Unless otherwise specifically noted in the work order, Arciform will not be responsible for the removal and/or disposal of any hazardous materials as defined by any federal, state or local law, regulation or ordinance, including without limitation: lead based paint, asbestos and material containing asbestos. If such hazardous materials are encountered in the course of Arciform's work, Client will pay any and all additional costs to test, remove and/or dispose of such hazardous materials in accordance with such federal, state and local laws, regulations and ordinances. Arciform is a certified Lead Base Paint Remodeler. Our license number is LBPR119917.

NASCLA: Workmanship shall meet or exceed the guidelines found in the publication *NASCLA Residential Construction Standards, March 2009*, by the National Association of State Contractor Licensing Agencies. If an item is not covered in that publication, industry standards will govern.

Materials: Arciform calls attention to the limitations of matching materials. While Arciform will make an effort to match existing materials, textures, colors and planes, exact duplication is not promised. Arciform will have the right to substitute materials of similar quality, pattern and design. Out of square and plumb conditions of existing structure will require some of the same in new work to properly mask the existing conditions and not call undue attention to those details. Any type of dry rot or insect and animal infestations that have caused damage to parts of the house or any structural inadequacies that are involved in the terms of this agreement or that may be an obstacle to completion of the said work will need to be addressed as a work order.

Site: Arciform will not be expected to keep gates and the like closed for animals and children. A construction site is inherently dangerous, and children and pets should be kept away from the construction area at all times, including after-hours. Arciform reserves the right to place a company sign on the premises of the site during execution of the agreement.

Good Faith: Client has the assurance that Arciform's services will be rendered in good faith and in a professional manner. The team assigned to Client's project may delegate your project, or parts of it, to other team members in order to utilize their special expertise or to provide service on the most efficient and timely basis. Arciform cannot be responsible for the performance, quality or timely completion of work by contractors not directly associated with Arciform or by vendors or manufacturers. Arciform may engage subcontractors to perform the work and provide materials in the execution of the work order provided that work and materials meet the standards of construction specified. Client agrees that only Arciform is authorized to direct progress of the work. Client agrees to provide access to a potable water supply and daily use of electrical power throughout the project.

Warranty: Arciform guarantees to the original client the work performed by Arciform personnel and subcontractors that come under our direct supervision for one year after substantial completion of individual work orders. Arciform will correct improper workmanship and repair or replace defective materials subject to the limitations described. If a problem occurs which is covered by this warranty, Client must notify Arciform in writing prior to the expiration of the one-year period. When that notification is received, Arciform will take steps to correct the problem. Please refer to Client-Supplied Material or Labor Disclaimer for items not covered. Arciform does not warrant the performance of or labor to repair manufacturers' products, nor can Arciform be responsible for the guarantee of any material, finish or product against wearing, fading, soiling or latent defect.

Limitation of Liability: Arciform carries a \$20,000.00 performance bond and \$1,000,000.00 in liability insurance. With the exception of damage that arises out of negligence or actions of Arciform or its subcontractors, Client is responsible for all

	<p>2303 N. RANDOLPH AVE PORTLAND, OR 97227</p>	<p>(503) 493-7344 restore@arciform.com</p>	<p>OR: CCB# 119917 WA: ARCIFL*910KJ</p>
---	--	---	---

materials at the job site before, during and while they are being installed. Arciform can assume no responsibility for delays caused by failure of others to meet commitments beyond Arciform’s control. Furnishing or installing of any or all materials or articles is subject to Arciform’s ability to obtain the same and to procure the necessary labor, which may be contingent on strikes, accidents or other delays beyond Arciform’s control. The parties have allocated their risks so that Client agrees, to the fullest extent permitted by law, to limit Arciform’s and the subconsultants’ liability to Client and any other persons for any and all claims, losses, costs or damages arising from this project or Arciform’s and subconsultant’s services to the amount of Arciform’s and subconsultant’s fee. Client waives and shall release and indemnify Arciform and subconsultants, for any claims in excess of the limits. This limitation on liability applies to claims under any legal theory, including without limitations negligence, professional errors and omissions, strict liability, personal injury, breach of contract, breach of warranty, negligent misrepresentation, statutory liability, or other acts giving rise to liability based upon contract, tort, or statute. Arciform and subconsultants shall not be liable for incidental or consequential damages.

Photography: Client authorizes Arciform to take photographs or other reproductions of the work performed for unlimited use on company ads, materials, website and in the press. Client’s name, photograph or address will not be used without the express permission of Client. Arciform has permission, after completion of work, to enter Client’s premises at a mutually agreed upon time for the purpose of taking such photographs or other reproductions. All photographs or reproductions will become the exclusive property of Arciform.

CCB: Arciform is a licensed contractor in the state of Oregon and Arciform’s Construction Contractors Board number is 119917.

Approval: The signing of this Agreement and receipt of a **\$1,000.00** retainer authorizes Arciform to proceed with the project development or the signing of this Agreement and receipt of a 20% deposit based on “Work Order” authorizes Arciform to proceed with the construction portions of any work order. If this project is terminated before completion, the deposit or retainer will be applied as compensation for services rendered. Any difference between the deposit or retainer and the compensation due for services rendered will be refunded to Client or billed to Client, as appropriate.

Client’s Signature _____ Date _____

Client’s Signature _____ Date _____

Arciform _____ Date _____

**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 occurrence	\$500,000	YES/NO
	Annual Aggregate	or per contract \$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.