

**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 **WEST Consultants Contractor**”).

**RECITALS**

**A.** The City is in need of consulting services to Milton Creek FEMA Revisions 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 Milton Creek FEMA letter and Map revisions in St. Helens, and Contractor accepts such engagement. The principal contact for Contractor shall be James Heyen email [jheyen@westconsultants.com](mailto:jheyen@westconsultants.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 December 31, 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 Exhibit 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:** West Consultants  
Attn: James Heyen  
2601 25<sup>th</sup> Street SE  
Salem, OR 97302

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.

**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**  
Council Meeting Date: 4/7/2021

**WEST CONSULTANTS**

Signature: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

## Exhibit A

### Scope of Work for Milton Creek FEMA Letter of Map Revision in St. Helens, OR

#### **Project Understanding**

We understand that the City of St. Helens wishes to construct a new Police Station at the northeast corner of Old Portland Road and Kaster Road. As shown on the effective Flood Insurance Rate Map (FIRM) numbers 41009C0452D and 41009C0456D, a portion of the site lies within the FEMA Special Flood Hazard Area (SFHA) of Milton Creek. According to the effective mapping, this portion of Milton Creek is studied by detailed methods but does not include a regulatory floodway. After consulting the applicable sections of the City of St. Helens Municipal Code, specifically Chapter 17.46, we proposed to conduct the following tasks in order to support the permitting for the proposed development.

#### **Task 1 – Site Reconnaissance**

Consultant shall conduct reconnaissance of the project site to become familiar with the general site layout, existing constraints, existing structures, and the physical and hydraulic conditions of the project site.

#### **Task 2 – Data Collection and Review**

Consultant shall research, collect, and review relevant data applicable to the hydraulic analysis. Such data include, but are not limited to, the effective FEMA hydraulic model for Milton Creek, current topographic mapping, and as-built plans for the bridge carrying Old Portland Road over Milton Creek.

#### **Task 3 – Hydrographic Survey**

Consultant shall conduct a hydrographic survey of Milton Creek in the project vicinity. The survey will include the researching of available survey monuments, establishment of local survey control, and collection of topographic and bathymetric survey data for use in updating the effective FEMA hydraulic model. The survey would begin at cross section “A” on the effective FIRM (approximately 2,000 feet upstream of Old Portland Road) to a suitable location downstream of the proposed project. WEST will coordinate with the City of St. Helens regarding access to private properties, as necessary, located upstream of the project site.

#### **Task 4 – Hydrology**

Consultant shall determine the 0.2% annual-chance (500-year) and 1% annual-chance (100-year or base flood) discharges from available published FEMA data.

#### **Task 5 – Hydraulic Modeling**

Consultant shall conduct hydraulic modeling of Milton Creek in the vicinity of the subject property. The modeling will update the water surface profile of the 0.2% and 1% annual chance flood events and determine the extents of the regulatory floodway following established FEMA methodology.

#### **Task 6 – Flood Hazard Mapping**

Consultant shall use FEMA methodology to develop work maps that define the limits of the modeled 0.2% and 1% annual chance flood event and floodway boundaries using available topographic data.

### **Task 7 – FEMA Letter of Map Revision Package**

Consultant shall prepare the required FEMA paperwork for submitting a LOMR application (MT-2 forms). The submittal package will include relevant project data, including hydraulic modeling files and revised floodplain mapping.

The LOMR application package will include:

- Hydraulic modeling files
- Updated flood profile plot and floodway data table
- Floodplain work map and associated GIS data
- Annotated FIRM panel(s) with tie-in to effective mapping
- Completed MT-2 forms
- ESA compliance documentation (provided by others)
- Project narrative
- Responses to comments by the City on draft package
- Coordination and response to comments by the FEMA contracted reviewer pursuant to acceptance

### **Task 8 – Technical Memorandum**

Consultant shall produce a technical memorandum that summarizes the approach, assumptions, data, methodology, and results of the analysis. The memorandum will serve as the project narrative for the LOMR application.

### **Task 9 – Project Management & Coordination**

Consultant's project manager will administer all contract paperwork, assign responsibilities to staff, monitor project progress, provide technical direction and oversight, and perform quality assurance reviews. The project manager will coordinate as needed with City of St. Helens and Mackenzie regarding project progress.

### **Fees**

WEST will perform the tasks outlined above on a time and materials basis for an estimated not-to-exceed cost of \$33,438. Work beyond the tasks outlined above will be billed at the rates indicated in Exhibit B. Such work will require the written approval from City of St. Helens prior to commencement.

### **Terms**

- Required endangered species compliance documentation will be provided by Client or Client's consultant. If requested, WEST can provide suggested consultants qualified to provide these services.
- Client will be responsible for all fees charged by FEMA to review the LOMR application. The current fee charged by FEMA for reviewing a LOMR application, if processed online, is \$8,000. This fee is not included in Exhibit B.
- Client will be responsible for any fees charged by Columbia County for LOMR processing.
- Client will be responsible for any land owner notification and/or permission to access private property necessary to conduct the hydrographic survey.
- Client will be responsible for any landowner notification or public notice requirements. This is applicable only if the modifications to the flood hazard mapping extend beyond the Client's property.



## **Schedule**

It is anticipated that approximately eight weeks will be required to complete the above listed tasks. FEMA's reviewers have 90 days to respond to the application once submitted. Processing of the LOMR typically takes 6 to 9 months.

**Exhibit B - Milton Creek FEMA Letter of Map Revision**

LABOR COSTS										
TASK #	DESCRIPTION	Vice President	Project Manager	Senior Engineer	Staff Engineer	GIS Analyst	Survey Lead	Survey Crew	Total Task Hours	Total Task Amount
1	Site Reconnaissance			8					8	\$ 1,160
2	Data Collection and Review			8					8	\$ 1,160
3	Hydrographic Survey		2	6			24	20	52	\$ 7,246
4	Hydrology				2				2	\$ 256
5	Hydraulic Modeling		8	24	24				56	\$ 8,056
6	Flood Hazard Mapping		4	4		16			24	\$ 3,732
7	FEMA Letter of Map Revision Package	1	8	16					25	\$ 4,090
8	Technical Memorandum	1	8	16					25	\$ 4,090
9	Project Management & Coordination		16						16	\$ 3,008
<b>TOTAL HOURS</b>		2	46	82	26	16	24	20	216	\$ 32,798

<b>HOURLY RATES</b>	\$ 266	\$ 188	\$ 145	\$ 128	\$ 150	\$ 150	\$ 120		
<b>TOTAL HOURLY ESTIMATE</b>	\$ 532	\$ 8,648	\$ 11,890	\$ 3,328	\$ 2,400	\$ 3,600	\$ 2,400		\$ 32,798



2601 25th Street SE  
Suite 450  
Salem, OR 97302  
(503) 485-5490

DIRECT COSTS	
Site Reconnaissance	\$ 90
FEMA Data Request	\$ 300
Hydrographic Survey	\$ 250
<b>TOTAL DIRECT COSTS</b>	<b>\$ 640</b>

TOTAL COSTS	
<b>LABOR COSTS</b>	<b>\$ 32,798</b>
<b>DIRECT COSTS</b>	<b>\$ 640</b>
<b>OTHER COSTS</b>	<b>\$ -</b>
<b>TOTAL</b>	<b>\$ 33,438</b>

**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	\$1,000,000	<input checked="" type="checkbox"/> YES <input type="checkbox"/> 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			
<b>Automobile Liability</b>	Combined Single – covering any vehicle used on City business	\$2,000,000	<input type="checkbox"/> YES <input checked="" type="checkbox"/> 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: _____		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<b>Professional Liability</b>	Per occurrence	\$500,000 or per contract	<input checked="" type="checkbox"/> YES <input type="checkbox"/> 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.