

SAMPLE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

This Agreement made on the ____ day of _____, 20 ____, between:

THE CITY OF FOREST GROVE
1924 Council Street
P.O. Box 326
Forest Grove, Oregon 97116
("City")

and

[Consultant]
[Address]
[Telephone]
[Fax]
("Consultant")

Consultant agrees to provide professional services (a.k.a. "personal" services) to the City pursuant to this Agreement. Such services are authorized by and subject to the terms and conditions of this Agreement.

The "Project":

[Describe Project]

[Include nature of project and budget/time parameters.]

Consultant has reviewed the City's description of the Project and conducted initial inquiries with the City and other local regulatory agencies regarding the Project. Consultant represents that Consultant is competent and willing to undertake professional services in connection with the Project and is capable of performing such professional services within the time allotted herein.

1. Consultant's Responsibilities

1. Consultant will provide professional services for the City during all phases of the Project to which this Agreement applies; serve as the City's representative for the Project as set forth

below and give professional consultation to the City during the performance of services hereunder.

2. Consultant will provide all professional services customarily furnished and reasonably necessary within the Scope of Services set out at Exhibit A (attached). Time is of the essence of this Agreement. The City and Consultant will develop a Project Schedule consistent with requirements of the Scope of Services and Consultant will complete each phase of the services in accord with that Schedule. Sub-consultants, if any, may only be used with the City's prior written consent. Consultant will contract directly with and will pay such sub-consultants. City has no obligation to pay any sub-consultants.
3. Consultant will pay all royalties and license fees which may be due by reason of materials or methods employed by Consultant or its sub-consultants or by reason of the necessary inclusion of protected materials or methods in the Project as designed except to the extent such materials or methods are included with the informed consent or at the direction of the City. Consultant will defend all suits or claims for infringement of patent, trademark, or copyright for which Consultant is responsible pursuant to this paragraph, which may be brought against the City, and Consultant will be liable to the City for all losses arising therefrom, including costs, expenses, and attorney fees.
4. Consultant will not be relieved of responsibility for errors or omissions or other defects in plans and specifications or any other documents prepared by Consultant for the City's review and approval.
5. Consultant will keep any real property involved in the Project free from all liens by reason of its services and will defend, indemnify and hold harmless the City from the operation and effect of any such lien or encumbrance that may be claimed by any person by reason of Consultant's services. If Consultant fails to remove any lien or adjust any other claim relating to Consultant's services, the City may without recourse by Consultant, pay the lien or claim and charge such payments, with any resulting costs incurred by the City deducted from any monies owed Consultant by City. (ORS 279A.220)
6. All services provided by Consultant (and any of their sub-consultants) will be performed in a prompt manner consistent with the professional standards of care and diligence applicable to those services performed by recognized firms in the Portland metropolitan region on the type of project being done. Consultant is and will be responsible for all services provided regardless of whether the services are provided directly by Consultant or by sub-consultants used by Consultant. Consultant will make all decisions called for promptly and without unreasonable delay.
7. Consultant will perform only the services authorized. Additional services will be compensated only if and as authorized in writing by the City. To the extent services are made necessary by fault or error of Consultant or their sub-consultants in the performance of their respective duties, responsibilities or obligations, the services will not be compensated.
8. Consultant will maintain all documents, books, papers, recordings and all other records, including any in digital format, arising out of or related to this Agreement for a period of

three (3) years after completion or abandonment of the Project. Such records will be made available, in full, to the City upon reasonable notice.

9. If applicable, Consultant will designate a representative fully knowledgeable about the Project with the authority to carry out Consultant's duties under this Agreement.
10. Consultant will furnish City with either its IRS-designated employer identification number or social security number whichever is appropriate.
11. Consultant will not provide any comments, information, press releases or opinions to representatives of newspapers, magazines, television and radio stations, weblogs or any other news medium without the City's prior written consent.
12. Consultant will give prompt written notice to City if Consultant becomes aware of, or forms a belief regarding, actual or potential problems, faults or defects in the Project, any nonconformity with the Agreement or with any federal, state or local law, regulation or ordinance, or has any objection to any decision or order made by City with respect to Consultant's duties under this Agreement. Any delay or failure on the City's part to provide a written response to Consultant will not be deemed or construed to be an endorsement of Consultant's notice and will not constitute a waiver of any of City's rights.
13. Any employee of Consultant or any sub-consultant will be paid at least time and a half for all time worked in excess of 40 hours in any one week, other than a person excluded from overtime pursuant to ORS Chapter 653 or United States Code Title 29.
14. Consultant will promptly pay, as due, all persons supplying labor or material for the performance of its work under this Agreement. (ORS 279B.220)
15. Consultant will pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of its work under this Agreement, and shall ensure subcontractors pay those amounts due from the subcontractors. (ORS 279B.220)
16. Consultant will pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
17. Consultant will promptly pay, as due, all persons or entities furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to Consultant's employees, those sums that Consultant agrees to pay for those services and all moneys and sums that Consultant collected or deducted from its employees' wages under any law, contract or agreement for the purpose of providing or paying for the services. (ORS 279B.230)

1.18 Consultant is a subject employer that will comply with ORS 656.017. Consultant warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Consultant shall indemnify City for any liability incurred by City as a result of Consultant's breach of the warranty under this Paragraph. (ORS 279B.230)

2. The City's Responsibilities

1. The City will designate a representative fully knowledgeable about the Project and with the authority to review and approve all Project work.
2. The City will furnish Consultant with information regarding requirements for the Project, including programs setting forth the City's objectives, schedules, constraints and criteria.
3. The City will render its decisions in a timely manner to avoid unreasonable delay in the orderly and sequential progress of Consultant's services.
4. The City will furnish Consultant with all information in its possession regarding the Project.

3. Digital Data and Specifications

1. Project reports, specifications, and digital data, if any, or other project documents submitted by Consultant to the City, or to any trade contractors or others for bidding or negotiation, will be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations and laws except to the extent expressly and specifically otherwise stated in detail in writing by Consultant at the time of such submission. By submitting such documents for bidding purposes, Consultant represents that Consultant has informed the City of any tests, studies, analysis or reports which are necessary or advisable to be performed by or for the City at that time.
2. Consultant will assign all original Geographic Information Systems (GIS) data and project documents, if any, to the City upon completion or termination of services under this Agreement.
3. All copies of digital data, specifications or other Project Documents, if any, provided the City become the property of the City which may use them without Consultant's permission for any proper purpose relating to the Project, including, but not limited to, additions to or completion of the Project.

4. Payments to the Consultant

1. For the period of this Agreement, Consultant agrees to provide services at the rates set forth in Exhibit B (attached).
2. For authorized reimbursable expenses, the City will pay Consultant at the rate specified. For unscheduled reimbursement items, Consultant will be reimbursed at Consultant's direct cost without markup. Consultant must list in detail exactly what schedule and unscheduled reimbursable expenses are every time invoice is submitted for payment.
3. Consultant will not be entitled to or be paid for services provided in excess of any guaranteed maximum price or fixed price that has been established for such services unless authorized by a written scope change.
4. Consultant will provide the City with monthly statement(s) of services rendered and authorized reimbursable expenses incurred for the preceding month. Consultant expressly

waives any right to payment for services rendered if such services are not billed within sixty (60) days following their rendition.

5. In addition to the monthly statement described in 4.4, Consultant's invoices will include a summary of services provided; a summary of reimbursable expenses; and a summary of authorized additional services, all in accordance with the compensation provisions of this Agreement, as well as an estimate of the percent of services completed as of the invoice date.
6. Invoices for reimbursable expenses will be accompanied by supporting documentation. Reimbursable Expenses: All pre-approved reasonable and necessary out-of-pocket project expenses which may include, but not be limited to, travel, parking, overnight food and lodging, rental cars, and postage.
7. Invoices for authorized additional services will outline and identify the services performed and by whom, the number of hours each person worked and applicable pay rates. These additional services **must be approved** in writing by Project Administrator before commencing any additional work.
8. Payments will be made monthly for services performed and invoiced.
9. Consultant shall keep its billing records, including timesheets, rate schedules and invoices necessary to support invoices for time and materials, additional services and expenses current consistent with generally recognized accounting principles and procedures and maintained for a period of two (2) years following completion or abandonment of the Project. Such records will be available to the City for inspection, copying and/or audit during normal business hours.

5. Termination

1. The City may terminate this Agreement for convenience and without cause by giving written notice of such termination to Consultant. Upon receipt of such notice, Consultant will immediately cease further performance except that Consultant may perform such services and incur such reimbursable expenses as reasonably necessary to preserve work that has been completed or is in progress and to achieve an orderly termination or transition. Upon such termination, the City will pay Consultant, pursuant to the payment provisions of this Agreement for all authorized services or reimbursable expenses up to the date established in the notice of termination. Authorized reimbursements include those costs necessarily and reasonably incurred by Consultant for organizing and carrying out the termination. The City will not be obligated to reimburse Consultant for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments.
2. Within a reasonable time after termination of this Agreement or of any Exhibit A work, Consultant will deliver to the City all materials and equipment and documentation, including raw or tabulated data and work in progress upon payment pursuant to paragraph 5.1 above.

3. Termination of this agreement by the City does not constitute a waiver or termination of any rights, claims, or causes of action the City may have against Consultant under this Agreement.
4. Upon a determination by a court or an arbitrator that any termination of Consultant or its successor in interest by the City was wrongful, such termination will be deemed converted to a termination for convenience as set forth above and Consultant's remedy will be so limited.

6. Insurance

1. Consultant will maintain throughout the period of this Agreement, as extended from time to time, and for a period of two (2) years after completion of the Project, the following minimum levels of insurance:
 - a. Workers' compensation coverage as required by law.
 - b. Employer's liability with limits of not less than \$2 million per occurrence.
 - c. Comprehensive general liability for damages as a result of death or bodily injury to any persons or destruction or damage to any property with limits of not less than \$2 million per occurrence including completed operations.
 - d. Comprehensive automobile liability insurance for at least \$2 million per occurrence.
 - e. Errors and omissions insurance with limits of not less than \$2 million.

Consultant will require that any sub-consultants engaged or employed by Consultant carry and maintain similar insurance as listed above with the same limits and coverage requirements.

2. Consultant's insurance will be primary and any insurance carried by the City will be excess and noncontributing. The general liability coverage will name the City, its officers, employees, agents and insurers as additional insureds and will contain a severability of interest clause. Additional insured coverage shall be for both on-going operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Workers' compensation coverage will contain a waiver of subrogation in favor of the City. All required coverage will be with companies rated A-/V or better by A.M. Bests Rating Service and will provide the City with thirty (30) days notice of material change, expiration, or cancellation.

3. Prior to commencement of any services under this Agreement, Consultant will furnish the City with evidence of insurance coverage and provisions as described under 6.1. In the event Consultant fails to maintain insurance as required, the City will have the option, but not the obligation, to obtain such coverage with costs to be the responsibility of and reimbursable by Consultant.

7. Force Majeure Delay

Neither party will be responsible to the other for its failure to perform on time when such failure is due to causes beyond the party's reasonable control such as acts of God, fire, theft, war, riot, embargoes, or acts of civil or military authorities. If Consultant's services are delayed by such contingencies, Consultant will immediately notify the City in writing and the City may either (1) extend

time of performance, or (2) terminate the uncompleted portion of Consultant's services at no cost to the City.

8. Independent Contractor

Consultant is an independent contractor and is entitled to no compensation other than the compensation expressly provided by this Agreement. Nothing in this Agreement will be construed as forming a partnership, agency or joint venture between the parties. As an independent contractor, Consultant is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgement does not affect Consultant's independent ability (or the ability of its insurer) to assert the monetary limitations, immunities or other limitations affecting a claim made under the Oregon Tort Claims Act.

9. Notices

Any notice required under this Agreement will be deemed properly given if directed by prepaid mail, certified return receipt requested, or delivered in hand to the parties at the address as specified on the face page of this Agreement.

10. Work is Property of City

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Consultant under this Agreement shall be the property of City.

11. Indemnity

Consultant acknowledges responsibility for any and all liability arising out of Consultant's performance under this Agreement. Consultant will indemnify, defend (with counsel acceptable to City) and hold City, its councilors, officers, employees, agents and insurers (collectively "City") harmless from and against any and all liability, losses, costs, settlements and expenses in connection with any action, suit or claim resulting or allegedly resulting from Consultant's acts, omissions, activities or services in the course of performing under this Agreement.

12. Successors and Assignments

1. Both City and Consultant bind themselves and any partner, successor, executor, administrator, or assign to this Agreement.
2. Neither City nor Consultant shall assign or transfer their interest or obligation hereunder in this Agreement without the prior written consent of the other. Consultant must seek and obtain City's written consent before subcontracting any part of the work required of Consultant under this Agreement.
3. Any assignment, transfer or subcontract attempted in violation of this subparagraph shall be void.

13. Records

1. Consultant shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least three (3) years after City makes final payment on this Agreement and all other pending matters are closed.
2. Consultant shall allow City (or any of its authorized representatives) to audit, examine, copy, take excerpts from or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

14. Intellectual Property

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Agreement shall vest in City. Consultant shall execute any assignment or other documents necessary to effect this paragraph. Consultant may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Consultant shall transfer to City any data or other tangible property generated by Consultant under this Agreement and necessary for the beneficial use of intellectual property covered by this paragraph.

15. Mediation/Litigation

If any dispute arises between the parties to this Agreement, the dispute will be submitted to mediation prior to any litigation. No claim or dispute arising under this Agreement may proceed to litigation if the parties have not first mediated that claim or dispute. Mediation will be conducted in Forest Grove, Oregon. The parties will attempt to select a mediator within 30 days of a party's request for mediation. If the parties fail to agree on a mediator, a mediator will be appointed by the presiding judge of the Washington County Circuit Court upon a party's request. The mediator's fees and expenses will be shared equally by the parties. Each party will bear its own attorney fees.

Any litigation arising out of or related to this Agreement will be tried in the court without a jury. Each party will bear its own fees, costs and expenses related to any litigation, including attorney fees.

16. Governing Law

This Agreement and all services performed hereunder will be interpreted under the laws of the State of Oregon without respect to conflict of laws principles. The exclusive venue for any lawsuit or action will be in Washington County, Oregon.

17. Assignment

Consultant cannot assign any rights nor delegate any responsibilities it has under this Agreement without the City's prior written approval.

18. Severability

If any term, condition or provision of this Agreement or the application thereof to any circumstance is determined to be invalid or unenforceable to any extent, the remaining provisions of this Agreement will not be affected but will instead remain valid and fully enforceable.

19. Article Headings

All article headings are inserted for convenience only and will not affect any construction or interpretation of this Agreement.

20. Waiver

No waiver of satisfaction of a condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver.

21. No Third-Party Beneficiaries

This Agreement confers no rights or benefits on any third party.

22. Entire Agreement

_____ This Agreement signed by both parties and so initialed by both parties in the
CITY margin opposite this paragraph constitutes a final written expression of all the terms of
_____ this Agreement and is a complete and exclusive statement of those terms. Any and all
CONS representations, promises, warranties, or statements by the City or the City's agents that
differ in any way from the terms of this written Agreement will be given no force and
effect. This Contract will be changed, amended, or modified only by written instrument
signed by both the City and Consultant. This Agreement will not be modified or altered by
any course of performance by either party.

CITY OF FOREST GROVE

CONSULTANT

MICHAEL JESSE VANDERZANDEN

[CONSULTANT NAME]

By: _____

By: _____

Title: City Manager

Title: _____

EXHIBIT A: [Scope of Work]

EXHIBIT B: [Cost Schedule]