

**OREGON CITY PUBLIC WORKS
PERSONAL SERVICES AGREEMENT**

Peter Skene Way Emergency Sanitary Sewer (CI 17-004)

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between:

CITY OF OREGON CITY ("City")

City of Oregon City
PO Box 3040
625 Center Street
Oregon City, OR 97045
Attention: John M. Lewis, Public Works Dir.

and

RH2 ENGINEERING, INC. ("Consultant")

RH2 Engineering, Inc.
6500 SW Macadam Avenue, Suite 125
Portland, Oregon 97239
Attn: Kyle Pettibone

RECITALS

A. City requires services that Consultant is capable of providing under the terms and conditions hereinafter described.

B. Consultant is able and prepared to provide such services as City requires under the terms and conditions hereinafter described.

The parties agree as follows:

AGREEMENT

1. **Term.** The term of this Agreement shall be from the date the contract is fully executed until **September 31, 2017**, unless sooner terminated pursuant to provisions set forth below. However, such expiration shall not extinguish or prejudice City's right to enforce this Agreement with respect to (i) breach of any warranty; or (ii) any default or defect in Consultant's performance that has not been cured.

2. **Compensation.** City agrees to pay Consultant on a time-and-materials basis for the services required. Total compensation, including reimbursement for expenses incurred, shall not exceed **one hundred three thousand five hundred fifty two and 00/100 dollars (\$103,552.00)**.

3. **Scope of Services.** Consultant's services under this Agreement shall consist of services as detailed in Exhibit A1, attached hereto and by this reference incorporated herein.

4. **Standard Conditions.** This Agreement shall include all of the standard conditions as detailed in Exhibit B, attached hereto and by this reference incorporated herein.

5. **Schedule.** The components of the project described in the Scope of Services shall be completed according Term, above.

6. **Integration.** This Agreement, along with the description of services to be performed attached as Exhibit A and the Standard Conditions to Oregon City Personal Services Agreement attached as Exhibit B, contain the entire agreement between and among the parties, integrate all the terms and conditions mentioned

herein or incidental hereto, and supersede all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

7. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, by hand delivery or by electronic means. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

Consultant shall be responsible for providing the City with a current address. Either party may change the address set forth in this Agreement by providing notice to the other party in the manner set forth above.

8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this _____ day of _____, 2017.

CITY OF OREGON CITY

RH2 ENGINEERING, INC.

By: _____

John M. Lewis

Title: Public Works Director

By: _____

Title: _____

DATED: _____, 2016.

DATED: _____, 2017.

By: _____

Anthony J. Konkol III

Title: City Manager

ORIGINAL CITY COMMISSION APPROVAL (IF APPLICABLE):

DATED: _____, 2016.

DATE: _____

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____

City Attorney

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Exhibit A1
Scope of Work
City of Oregon City
On-call Services Agreement
Peter Skene Way Emergency Sanitary Sewer Replacement
March 2017

Background

In February 2017, an existing 8-inch sanitary sewer main was damaged by a landslide event that occurred adjacent to Peter Skene Way in a wooded area along a steep ravine on a fork of Newell Creek. Following the landslide, the City of Oregon City (City) responded by installing a temporary bypass pumping system to divert sanitary flows around the damaged portion of the sewer. It is anticipated that the work involved in replacing the 8-inch sanitary sewer main would include rerouting the sewer to approximately follow the alignment of an adjacent access road and 8-inch waterline at a depth of approximately 15 feet. Due to the emergency nature of the work, it is anticipated that design and construction of the replacement sewer will follow an expedited schedule.

The City has requested that RH2 Engineering, Inc., (RH2) provide engineering design services for replacement of approximately 760 linear feet of 8-inch sanitary sewer main that was damaged during the landslide event. This Scope of Work has been prepared based on preliminary discussions with the City regarding the scope of the anticipated repairs and a brief field visit to review the project site.

Project Understanding and Assumptions

The following outlines RH2's understanding of the City's responsibilities, and the overall project goals and requirements. Assumptions used in preparing this Scope of Work are also identified.

The City will be responsible for the following.

- Provide a project manager who is responsible for overall project management and will provide coordination between RH2 and the City.
- Establish the work scope and design parameters for the project, including related standards.
- Provide RH2 copies of all available, relevant City utility as-built plans, topographical maps, geologic and geotechnical reports, and studies pertinent to the project area.
- Provide RH2 with access to the City's Geographical Information System (GIS), parcel and utility mapping, aerial photography and topographic contours.
- Provide RH2 with the City's standard drafting frame, title block, and a Drafting Standards Manual.
- Provide RH2 with digital copies of the City's standard construction specifications, details, and front-end bidding document sections.
- Provide timely review and comment on all reports, drawings, and specifications submitted by RH2 to the City for review and approval.
- Submit applications and any applicable fees to the State, DEQ and/or Clackamas County (County) for any required permits (no permits are currently anticipated). (Note: RH2 may be requested to contribute project information for such applications as described in this Scope of Work.)

- Maintain records and process consultant invoices.
- Provide legal review of all contracts, bid forms, and real property.
- Provide notifications, as necessary, to the public and business community regarding the nature and timing of the work to be completed.

In preparing this Scope of Work, the following assumptions were made.

- *The proposed improvements generally include the design of approximately 760 linear feet of 8-inch sanitary sewer main within private property between sanitary sewer manholes 11450 and 11442. It is anticipated that all easements for the proposed improvements will be negotiated between the City and property owner.*
- *The project site is in an area identified by the Oregon Department of Geology and Mineral Industries (DOGAMI) as a moderate to high landslide hazard with recent landslides; design investigation and construction documents should account for potential slope instability. In 2003, the City completed the installation of the 8-inch waterline that was reportedly installed at a depth below an identified slide plane. It is generally assumed that the proposed sanitary sewer main will be installed at a depth at or below the existing waterline. The City will provide RH2 with a copy of the geotechnical data and report(s) from the 2003 waterline design for review. If it is determined that additional geotechnical investigations are required, RH2 will prepare an amendment for the additional work.*
- *The City will coordinate, submit, and pay directly for construction permits.*
- *RH2 will rely on the accuracy and completeness of any data, information, or materials provided by the City or others in relation to the work.*

Task 1 – Project Management Services

Objective: Provide coordination of the RH2 project team, including regular communication with City staff, periodic progress reporting, monthly billings, and updates on project scope, schedule, and budget.

Approach:

- 1.1 Provide Project Administration and Reporting: Provide project management services during the design, bidding, and construction services phases, including staff scheduling, recordkeeping and filing, and project invoicing. Provide monthly billing invoices, including a detailed breakdown of staff hours billed by task and subtask. Include a summary of expenditures, percentage complete by task, and budget remaining per task. Coordinate with the City's project manager regularly to discuss project and task status. Prepare and maintain the overall project schedule, including adding staff, subconsultants, and other resources.

RH2 Deliverables:

- Monthly invoices.
- Project schedule at project kickoff, 50-percent, and 90-percent milestones.
- Meeting agendas and minutes.

Task 2 – Data Collection and Survey

Objective: Initiate data collection of known available records, plans, and reports relevant to the existing sewer, and perform alternatives analysis and preliminary plan development. Contract with a professional land surveyor to perform a topographic survey that can be used for both the preliminary and final design of the project. Review available geotechnical information and reports, perform limited geotechnical reconnaissance to evaluate reported conditions, and prepare findings and recommendations. The need for supplemental geotechnical assessment may be indicated, based on review and preliminary design.

Assumptions:

- *The City will provide survey data for existing as-builts for subsurface utilities.*
- *The City will support inquiry at City Building and Planning departments for supporting geotechnical documents.*

Approach:

2.1 Coordinate Survey and Prepare Base Maps: Contract and coordinate with professional land surveyor, AKS Engineering and Forestry, Inc., (AKS) to perform topographical survey of surface features, monumentation, marked utilities, property line, and right-of-way (ROW) lines of the proposed alignment. Coordinate with AKS as necessary and to respond to questions. Review survey data and format for design use. Perform one (1) site visit to compare survey information with field conditions. Update plans as necessary based on site visit. *It is assumed that utility locates will be requested by the surveyor and provided via the One-Call network.*

2.2 Investigate Engineering Geology and Environmental/Hazards: Perform a review of existing geologic and environmental data available (currently online and from previous reports). Perform a field reconnaissance of the proposed alignment to observe visible indicators of geologic/environmental issues or concerns and specifically address issues related to potential soil instability. Prepare a geotechnical memorandum summarizing review and recommendations for design and construction, and the additional need for field exploration, if applicable, using test pits or borings to evaluate subsurface conditions along and near the proposed alignment.

Optional (under contract amendment): Contract and coordinate with geotechnical drilling contractor to conduct shallow boring explorations along alignment. Observe field exploration as necessary. Contract with soil testing laboratory for soil properties analysis. Prepare a brief technical memorandum summarizing field observations and laboratory analyses, and coordinate with design team and City to incorporate findings and recommendations into design.

RH2 Deliverables:

- Topographical survey and base maps for project area in digital (PDF) format.
- Engineering geology memorandum of field reconnaissance; one (1) hard copy in 8½-inch by 11-inches, and in electronic (PDF) format.
- Geotechnical technical memorandum (optional, under contract amendment); one (1) hard copy; 8½-inch by 11-inches, and in electronic (PDF) format.

Task 3 – 50-percent Design

Objective: Prepare preliminary plans and a construction cost estimate for the proposed sanitary sewer replacement.

Approach:

- 3.1 Prepare 50-percent Design: Prepare preliminary design plans to the 50-percent design level with horizontal and vertical alignment detail of the sanitary sewer main for City review. A preliminary opinion of probable construction costs will be developed for the preliminary design review submittal.
- 3.2 Attend 50-percent Review Meeting: Provide and present 50-percent design, including preliminary plan and profile sheets, details, engineer's construction cost estimate, and updated project schedule for the City's review and comment. Attend one (1) review meeting with City staff and prepare meeting agenda and minutes. *It is assumed that the City will provide review comments as written summary or as redline markups to the plans.*

RH2 Deliverables:

- Preliminary sanitary sewer main plan and profile sheets at 1 inch equals 20 feet horizontal scale, and 1 inch equals 5 feet vertical scale in electronic format (PDF), including preliminary drawings for cover sheet, construction notes, and details.
- Preliminary engineer's estimate of probable construction cost based on 50-percent design in electronic format (PDF).
- Updated design schedule in electronic format (PDF).

Task 4 – 90-percent Design

Objective: Develop 90-percent plan sheets, technical specifications, bid documents, and engineer's cost estimate for the proposed improvements.

Approach:

- 4.1 Prepare 90-percent Plans and Specifications: Incorporate the City's 50-percent review comments and prepare 90-percent design plans. *The plans will include the sanitary sewer plan and profiles, trench, bedding materials, backfill, compaction, and surface restoration, along with other supporting details and requirements for construction, testing, and permitting. It is assumed that the construction contractor will be responsible for preparing the final traffic control and erosion control plans in accordance with City requirements.* Prepare construction contract documents to the 90-percent level, including both technical and non-technical construction contract requirements, general conditions, and special requirements. *Non-technical front-end specifications will be prepared using the City's most recent standard forms. Technical specifications will be in Oregon Department of Transportation/American Public Works Association format. Work will include a determination of the need for special pre-bid qualifications for contractors, which will be incorporated into final bidding documents, if warranted.* Prepare 90-percent engineer's estimate of probable construction costs for the proposed improvements.
- 4.2 Perform Quality Control Review: Perform internal quality control and quality assurance (QA/QC) review of the 90-percent plans and specifications.
- 4.3 Attend 90-percent Review Meeting: Provide and present 90-percent design, including plans, specifications, engineer's construction cost estimate, and updated project schedule for the City's review and comment. Attend one (1) review meeting with City staff and prepare meeting agenda and minutes. *It is assumed that the City will provide review comments as written summary or as redline markups to the plans.*

RH2 Deliverables:

- Electronic (PDF) versions of 90-percent plans and construction contract documents, including front-end documents and technical specifications.
- Engineer's estimate of probable construction cost based on 90-percent design in electronic format (PDF).
- Updated construction schedule in electronic format (PDF).

Task 5 – Final Design

Objective: Develop final plan sheets, technical specifications, and bid documents for the proposed improvements.

Approach:

- 5.1 Prepare Final Plans and Specifications: Incorporate QA/QC comments and City's 90-percent review comments and prepare plans and specifications for bidding and construction. Provide one (1) set of final documents in hard copy, half-size (11-inch by 17-inch) format for use in reproduction of bidding documents. Assist City in providing information and preparing applications for permit and agency review.

RH2 Deliverables:

- Electronic versions of the complete construction contract bidding documents, including final front-end documents, technical specifications, plans, standard drawings, and cost estimate (PDF, Word, Excel, and AutoCAD).
- Provide one (1) hard copy reproducible set of bidding documents.

Task 6 – Services During Bidding

Objective: Provide engineering services during the bidding phase of the project for securing a qualified contractor to construct the project.

Assumptions:

- *The City will be the main point of contact during bidding and will be responsible for advertising the project for bids, and producing and distributing bidding documents.*

Approach:

- 6.1 Respond to Bidder Questions and Prepare Addendum: Respond to questions from bidders and clarify, revise, or change construction plans, technical specifications, or construction contract conditions during the bidding process. Prepare an addendum if determined necessary during the bidding process to plan holders. *It is assumed that up to one (1) addendum may be needed.*
- 6.2 Assist with Bid Opening and Bidder Evaluation: Review specialty contractor prequalification applications as part of the bid review process. Review subcontractors, suppliers, and others proposed by the prime contractor, if required, by the bidding documents. Develop bid tabulation and provide a letter of recommendation for award.

RH2 Deliverables:

- Up to one (1) addendum, as needed.
- Letter of recommendation for award in electronic format (PDF).

Task 7 – Services During Construction

Objective: Provide construction contract administration services during project construction to support the City. *As the engineer of record, RH2 will provide periodic observation of the construction to review whether those elements of construction that are observed by RH2 conform to the project plans and specifications.*

Assumptions:

- *RH2 will provide construction contract administration and observations, including periodic site visits to monitor progress, respond to questions and address issues, confirm pay requests, and other on-call requests from the City. An average of twenty-four (24) hours per week for six (6) weeks has been assumed for field visits and observations.*
- *Submittal review is assumed to be twenty (20) submittals with 25-percent resubmittal, including the project schedule and schedule updates.*
- *The contractor will be responsible for providing construction survey and staking for field control and as-built surveying for use in preparing as-built drawings.*
- *The City will coordinate directly with the contractor for testing, system shut downs, and connections.*
- *Construction phase services defined in this task are variable in nature and depend in part on the contractor awarded the project. RH2's estimate is based upon an experienced and reasonable contractor being awarded the construction contract. RH2 recommends the City budget the amount shown in the estimate plus a contingency amount. The contingency could cover additional services if a more intensive level of observation and construction support is necessary.*

Approach:

- 7.1 Prepare for and Attend Pre-construction Conference: Prepare for and attend one (1) pre-construction conference with the contractor, City, RH2, special inspector, and impacted or adjacent utilities. Prepare an agenda and meeting minutes for the pre-construction conference.
- 7.2 Review RFIs and Change Order Proposals: Review written requests for information (RFIs) and change order proposals and provide written responses to the City.
- 7.3 Review Submittals: Review contractor submittals, shop drawings, and field-testing per the project documents. Coordinate with the City regarding substitute and “or-equal” items proposed for use by the contractor.
- 7.4 Provide Periodic Field Observation, Attend Construction Meetings, and Final Observation: Provide part-time observation of the construction work in progress. *It is assumed that part-time construction observation includes, on average, approximately twenty-four (24) hours per week for six (6) weeks of construction observation. RH2 will coordinate with the contractor and City inspectors to provide construction observation at critical stages of construction and as requested by the City. The Contractor will retain and coordinate with testing firm(s) for all special inspections. Meet with the City and contractor weekly to review the contractor's progress. Prepare weekly meeting agenda and minutes. Assist the City with project closeout services, including production of a punchlist and review of punchlist completion. Prepare recommendation for project acceptance.*

7.5 Prepare Record Drawings: Provide record drawings representative of the as-constructed project. *Record drawings will be completed based upon contractor and inspector red-lined markups to as-bid drawings. Record drawings will be completed per City standards.*

RH2 Deliverables:

- Pre-construction conference administration and documentation, including pre-construction conference meeting agenda and minutes.
- Submittal and shop drawings review and documentation.
- RFI and change order review and documentation, if required.
- Weekly construction meeting agenda and minutes.
- Construction observation and correspondence with the City and contractor, as needed, within the budgeted hours authorized. Construction observation reports from site visits to be provided to the City at progress meetings.
- Punchlist following final inspection.
- Letter recommending project acceptance.
- Record drawings in PDF and AutoCAD® DWG format, including external references, prepared in accordance with City standards.

EXHIBIT A1

**City of Oregon City
On-call Services Agreement
Peter Skene Way Emergency Sanitary Sewer Replacement**

Fee Estimate

Description		Staff Engineer	Senior Project Engineer	Engr. Geologist	Principal Engineer/Project Manager	Administrative Support	Total Hours	Total Labor	Total Subconsultant	Total Expense	Total Cost
Classification Rate		Professional II \$151.00	Professional VII \$207.00	Professional VII \$207.00	Professional VIII \$216.00	Administrative III \$94.00					
Task 1	Project Management Services	-	14	-	6	4	24	\$ 4,570	\$ -	\$ 115	\$ 4,685
1.1	Provide Project Administration and Reporting	-	14	-	6	4	24	\$ 4,570	\$ -	\$ 115	\$ 4,685
Task 2	Data Collection and Survey	8	4	18	3	3	36	\$ 6,692	\$ 11,040	\$ 458	\$ 18,190
2.1	Coordinate Survey and Prepare Base Maps	8	2	-	1	1	12	\$ 1,932	\$ 11,040	\$ 281	\$ 13,253
2.2	Investigate Engineering Geology and Environmental/Hazards	-	2	18	2	2	24	\$ 4,760	\$ -	\$ 177	\$ 4,937
Task 3	50-percent Design	23	8	-	8	1	40	\$ 6,951	\$ -	\$ 849	\$ 7,800
3.1	Prepare 50-percent Design	20	5	-	5	-	30	\$ 5,135	\$ -	\$ 698	\$ 5,833
3.2	Attend 50-percent Review Meeting	3	3	-	3	1	10	\$ 1,816	\$ -	\$ 151	\$ 1,967
Task 4	90-percent Design	44	14	-	14	17	89	\$ 14,164	\$ -	\$ 1,606	\$ 15,770
4.1	Prepare 90-percent Plans and Specifications	40	8	-	8	16	72	\$ 10,928	\$ -	\$ 1,365	\$ 12,293
4.2	Perform Quality Control Review	1	3	-	3	-	7	\$ 1,420	\$ -	\$ 90	\$ 1,510
4.3	Attend 90-percent Review Meeting	3	3	-	3	1	10	\$ 1,816	\$ -	\$ 151	\$ 1,967
Task 5	Final Design	10	5	-	5	4	24	\$ 4,001	\$ -	\$ 420	\$ 4,421
5.1	Prepare Final Plans and Specifications	10	5	-	5	4	24	\$ 4,001	\$ -	\$ 420	\$ 4,421
Task 6	Services During Bidding	16	4	2	-	8	30	\$ 4,410	\$ -	\$ 497	\$ 4,907
6.1	Respond to Bidder Questions and Prepare Addendum	8	2	2	-	4	16	\$ 2,412	\$ -	\$ 254	\$ 2,666
6.2	Assist with Bid Opening and Bidder Evaluation	8	2	-	-	4	14	\$ 1,998	\$ -	\$ 243	\$ 2,241
Subtotal Peter Skene Way Emergency Sanitary Sewer Replacement Tasks		101	49	20	36	37	243	\$ 40,788	\$ 11,040	\$ 3,945	\$ 55,773
Task 7	Services During Construction	200	36	12	12	34	294	\$ 45,924	\$ -	\$ 1,825	\$ 47,749
7.1	Prepare for and Attend Pre-construction Conference	4	2	-	2	2	10	\$ 1,638	\$ -	\$ 55	\$ 1,693
7.2	Review RFIs and Change Order Proposals	16	8	-	2	8	34	\$ 5,256	\$ -	\$ 131	\$ 5,387
7.3	Review Submittals	24	12	-	2	12	50	\$ 7,668	\$ -	\$ 192	\$ 7,860
7.4	Provide Periodic Field Observation, Attend Construction Meetings, and Final Inspection	144	12	12	6	12	186	\$ 29,136	\$ -	\$ 1,073	\$ 30,209
7.5	Prepare Record Drawings	12	2	-	-	-	14	\$ 2,226	\$ -	\$ 373	\$ 2,599
Subtotal Services During Construction Tasks		200	36	12	12	34	294	\$ 45,924	\$ -	\$ 1,825	\$ 47,749
Peter Skene Way Emergency Sanitary Sewer Replacement		301	85	32	48	71	537	\$ 86,712	\$ 11,040	\$ 5,770	\$ 103,522

EXHIBIT A1
RH2 ENGINEERING, INC.
2017 SCHEDULE OF RATES AND CHARGES

RATE LIST	RATE	UNIT
Professional I	\$139	\$/hr
Professional II	\$151	\$/hr
Professional III	\$162	\$/hr
Professional IV	\$172	\$/hr
Professional V	\$182	\$/hr
Professional VI	\$191	\$/hr
Professional VII	\$207	\$/hr
Professional VIII	\$216	\$/hr
Professional IX	\$216	\$/hr
Technician I	\$93	\$/hr
Technician II	\$98	\$/hr
Technician III	\$131	\$/hr
Technician IV	\$139	\$/hr
Administrative I	\$65	\$/hr
Administrative II	\$78	\$/hr
Administrative III	\$94	\$/hr
Administrative IV	\$109	\$/hr
Administrative V	\$130	\$/hr
CAD/GIS System	\$27.50	\$/hr
CAD Plots - Half Size	\$2.50	price per plot
CAD Plots - Full Size	\$10.00	price per plot
CAD Plots - Large	\$25.00	price per plot
Copies (bw) 8.5" X 11"	\$0.09	price per copy
Copies (bw) 8.5" X 14"	\$0.14	price per copy
Copies (bw) 11" X 17"	\$0.20	price per copy
Copies (color) 8.5" X 11"	\$0.90	price per copy
Copies (color) 8.5" X 14"	\$1.20	price per copy
Copies (color) 11" X 17"	\$2.00	price per copy
Technology Charge	2.50%	% of Direct Labor
Mileage	\$0.575	price per mile (or Current IRS Rate)
Subconsultants	15%	Cost +
Outside Services	at cost	

Rates listed are adjusted annually.

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

1. Consultant Identification. Consultant shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Consultant's social security number, as City deems applicable.

2. Payment.

(a) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers.

(b) City agrees to pay Consultant within thirty (30) days after receipt of Consultant's itemized statement. Amounts disputed by City may be withheld pending settlement.

(c) City certifies that sufficient funds are available and authorized for expenditure to finance the cost of the services to be provided pursuant to this Agreement.

(d) City shall not pay any amount in excess of the compensation amounts set forth above, nor shall City pay Consultant any fees or costs that City reasonably disputes.

3. Independent Contractor Status.

(a) Consultant is an independent contractor and is free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results.

(b) Consultant represents that it is customarily engaged in an independently established business and is licensed under ORS chapter 671 or 701, if the services provided require such a license. Consultant maintains a business location that is separate from the offices of the City and bears the risk of loss related to the business as demonstrated by the fixed price nature of the contract, requirement to fix defective work, warranties provided and indemnification and insurance provisions of this Agreement. Consultant provides services for two or more persons within a 12 month period or routinely engages in advertising, solicitation or other marketing efforts. Consultant makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and

Consultant has the authority to hire or fire persons to provide or assist in providing the services required under this Agreement.

(c) Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law (including applicable City or Metro business licenses as per Oregon City Municipal Code Chapter 5.04). Consultant shall furnish the tools or equipment necessary for the contracted labor or services. Consultant agrees and certifies that:

(d) Consultant is not eligible for any federal social security or unemployment insurance payments. Consultant is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Consultant under this Agreement.

(e) Consultant agrees and certifies that it is licensed to do business in the state of Oregon and that, if Consultant is a corporation, it is in good standing within the state of Oregon.

4. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term by mutual written consent of the parties or by the City upon ten (10) days written notice to the Consultant, delivered by certified mail or in person.

(b) Upon receipt of notice of early termination, Consultant shall immediately cease work and submit a final statement of services for all services performed and expenses incurred since the date of the last statement of services.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of City provided in this Agreement and relating to defaults by Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**STANDARD CONDITIONS TO OREGON CITY
PERSONAL SERVICES AGREEMENT**

5. No Third-Party Beneficiaries. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

6. Payment of Laborers; Payment of Taxes.

(a) Consultant shall:

(i) Make payment promptly, as due, to all persons supplying to Consultant labor and materials for the prosecution of the services to be provided pursuant to this Agreement.

(ii) Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.

(iii) Not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished.

(iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Consultant under this Agreement and, unless Consultant is subject to back-up withholding, City will not withhold from such compensation or payments any amount(s) to cover Consultant's federal or state tax obligation.

(v) Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 653.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime.

(b) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Agreement as such claim becomes due, City may pay such claim to the person furnishing the labor or services and shall charge the amount of the payment against funds due or to become due Consultant by reason of this Agreement.

(c) The payment of a claim in this manner

shall not relieve Consultant or Consultant's surety from obligation with respect to any unpaid claims.

(d) Consultant and subconsultants, if any, are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

7. Subconsultants and Assignment.

Consultant shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Consultant.

8. Access to Records. City shall have access to all books, documents, papers and records of Consultant that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

9. Ownership of Work Product; License. All work products of Consultant that result from this Agreement (the "Work Products") are the exclusive property of City. In addition, if any of the Work Products contain intellectual property of Consultant that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Consultant hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Consultant under this Agreement. The parties expressly agree that all works produced (including, but not limited to, any taped or recorded items) pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Consultant shall not publish, republish, display or otherwise use any work or Work Products resulting from this Agreement without the prior written agreement of City.

10. Compliance With Applicable Law.

Consultant shall comply with all federal, state, and

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

local laws and ordinances applicable to the services to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230 and 279B.270. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

11. Professional Standards. Consultant shall be responsible, to the level of competency presently maintained by others practicing in the same type of services in City's community, for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this authorization.

12. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

13. Indemnity and Insurance.

(a) Indemnity. Consultant acknowledges responsibility for liability arising out of Consultant's negligent performance of this Agreement and shall hold City, its officers, ~~agents, Consultants,~~ and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim ~~caused or alleged to be~~ caused by the negligent acts, omissions, or errors activities or services by Consultant, or the agents, Consultants or employees of Consultant provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Consultant certifies that Consultant has qualified for workers' compensation as required by the state of Oregon. Consultant shall provide the Owner, within ten (10) days after execution of this Agreement, a certificate of insurance evidencing coverage of all subject workers under Oregon's

workers' compensation statutes. The insurance certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. All agents or Consultants of Consultant shall maintain such insurance.

(c) Comprehensive General and Automobile Insurance. Consultant shall maintain comprehensive general and automobile liability insurance for protection of Consultant and City and for their directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, including loss of use, and occurring as a result of, or in any way related to, Consultant's operation, each in an amount not less than \$1,000,000 combined, single-limit, per-occurrence/annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Consultant.

(d) Errors and Omissions Insurance. Consultant shall provide City with evidence of professional errors and omissions liability insurance for the protection of Consultant and its employees, insuring against bodily injury and property damage arising out of Consultant's negligent acts, omissions, ~~or errors activities or services~~ in an amount not less than \$500,000 combined, single limit. Consultant shall maintain in force such coverage for not less than three (3) years following completion of the project. Such insurance shall include contractual liability.

Within ten (10) days after the execution of this Agreement, Consultant shall furnish City a certificate evidencing the dates, amounts, and types of insurance that have been procured pursuant to this Agreement. Consultant will provide for not less than thirty (30) days' written notice to City before the policies may be revised, canceled, or allowed to expire. Consultant shall not alter the terms of any policy without prior written authorization from City. The provisions of this subsection apply fully to Consultant and its Consultants and agents.

14. Legal Expenses. In the event legal action is brought by City or Consultant against the other to

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enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

15. Severability. The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

16. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

17. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

18. Hierarchy. The conditions contained in this document are applicable to every Personal Services Agreement entered into by the City of Oregon City in the absence of contrary provisions. Should contrary provisions be included in a Personal Services Agreement, those contrary provisions shall control over these conditions.

19. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the state of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

20. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. Nonwaiver. The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

22. Information and Reports. Consultant shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Consultant shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but shall remain with Consultant. Copies as requested shall be provided at the Consultant's standard expense rates, free of cost to City.

23. City's Responsibilities. City shall furnish Consultant with all available necessary information, data, and materials pertinent to the execution of this Agreement. City shall cooperate with Consultant in carrying out the work herein and shall provide adequate staff for liaison with Consultant.

24. Arbitration. All disputes arising out of or under this Agreement shall be timely submitted to nonbinding mediation prior to commencement of any other legal proceedings. The subsequent measures apply if disputes cannot be settled in this manner.

(a) Any dispute arising out of or under this Agreement shall be determined by binding arbitration.

(b) The party desiring such arbitration shall give written notice to that effect to the other party and shall in such notice appoint a disinterested person of recognized competence in the field as arbitrator on its behalf. Within fifteen (15) days thereafter, the other party may, by written notice to the original party, appoint a second disinterested person of recognized competence as arbitrator on its behalf. The arbitrators thus

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appointed shall appoint a third disinterested person of recognized competence, and the three arbitrators shall, as promptly as possible, determine such matter, provided, however, that:

(i) If the second arbitrator is not appointed as described above, then the first arbitrator shall proceed to determine such matter; and

(ii) If the two arbitrators appointed by the parties are unable to agree, within fifteen (15) days after the second arbitrator is appointed, on the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties and, if the parties fail to agree on the selection of the third arbitrator within fifteen (15) days after the arbitrators appointed by the parties give notice, then, within ten (10) days thereafter, either of the parties, on written notice to the other party, may request such appointment by the presiding judge of the Clackamas County Circuit Court.

(c) Each party shall each be entitled to present evidence and argument to the arbitrators. The determination of the majority of the arbitrators or the sole arbitrator, as the case may be, shall be conclusive on the parties, and judgment on the same may be entered in any court having jurisdiction over the parties. The arbitrators or the sole arbitrator, as the case may be, shall give written notice to the parties, stating the arbitration determination, and shall furnish to each party a signed copy of such determination. Arbitration proceedings shall be conducted pursuant to ORS 33.210 et seq. and the rules of the American Arbitration Association, except as provided otherwise.

(d) Each party shall pay the fees and expenses of the arbitrator appointed by such party and one-half of the fees and expenses of the third arbitrator, if any.

25. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.