

**OREGON CITY PUBLIC WORKS  
PERSONAL SERVICES AGREEMENT**

**Hazelwood Drive Sewer Replacement – Phase 1 (CI 16-005)**

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 **ninety-three thousand nine hundred sixty five and 00/100 dollars (\$93,965.00)**.

3. **Scope of Services.** Consultant’s services under this Agreement shall consist of services as detailed in Exhibit A, 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 A**  
**Scope of Work**  
**City of Oregon City**  
**Hazelwood Drive Sewer Replacement – Phase 1**  
**Alternative Analysis and Preliminary Design**  
**Professional Engineering Services**  
March 2017

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## **BACKGROUND**

The City of Oregon City's (City) 2014 *Sewer Master Plan* (SMP) has identified the need to replace and upsize portions of approximately 3,000 linear feet of sanitary sewer to relieve surcharging and flooding in Warner-Parrot Road and the Hazelwood Drive area located south of downtown. According to sewer system modeling performed by Brown and Caldwell (B&C), the hydraulic model predicts that under 5-year and 10-year storm events, the upper sections of the Hazelwood Drive collection system will become surcharged to the point that the hydraulic grade line (HGL) is above the ground surface and result in flooding. This also has been demonstrated by City staff observations of significant surcharging along Warner-Parrett Road and in the upstream sewers that run up Shenandoah Drive and into Joyce Court. Five properties have experienced basement flooding during storm events in 2009, and two of these same properties had flooding again during storm events in 2012.

Replacement of the sewer main downstream of the affected area is complicated by its location within the backyards of several homes with extremely limited access, as well as its proximity to Coffee Creek, which runs parallel and immediately adjacent to the sewer main in many sections. This has hampered efforts to inspect the sewer; thus, its condition and level of infiltration is currently unknown.

The City has selected RH2 Engineering, Inc., (RH2) to perform the engineering services for this project. The primary goals of this project are to replace and upsize the sections of the sewer main to relieve the surcharging, flooding, and flooded basements during storm events. However, due to the difficult and sensitive nature of the project and its location, it has been determined that more definition to the project is required to: 1) review the condition and extent of sewer replacement that is necessary; 2) identify, evaluate, and determine the alternatives and approach for performing the work; and 3) prepare a preliminary design to approximately the 30-percent design level.

As part of the scoping phase, the City requested that B&C perform additional modeling to determine whether it is feasible to sufficiently reduce the HGL (to reduce flooding concerns) without replacing the entire section of main previously identified in the SMP. Preliminary results indicate that it may be possible to sufficiently reduce surcharging by replacing the existing sewer from the intersection of Warner-Parrott Road and Shenandoah Drive south to Hartke Park, as well as the sewer main within Hazelwood Drive to Vine Street, without having to replace the existing sewer located in the backyard easements south of Hartke Park.

The major elements and services to be performed by RH2 at this preliminary stage will include the following tasks.

- Data Collection and Topographic Survey

- Sewer Closed-circuit Television (CCTV) Inspection
- Geotechnical and Environmental Review
- Alternatives Analysis and Recommended Approach
- Preliminary Design

Additional engineering services for the final design, bidding, and construction contract administration phases may be authorized by the City as part of a future contract amendment. The major elements and services that would be performed by RH2 as part of future work may include the following tasks.

1. Final Design
2. Permitting and Easement Acquisition
3. Services During Bidding
4. Services During Construction

Following is a detailed description of the tasks that will be performed as part of this Scope of Work.

## **Project Understanding and Assumptions**

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

The City will be responsible for the following.

- Provide RH2 copies of all available and relevant City utility as-built plans, topographical maps, reports, studies, and easements pertinent to the project.
- Provide RH2 with geographic information system (GIS) technical support, including a base map based on coordinate geometry with aerial photography and topographic contours.
- Provide RH2 with the City's standard drafting frame, title block, and a Drafting Standards Manual.
- Provide notifications, as necessary, to the public and business community regarding the nature and timing of the work to be completed, as well as arrange private property access to complete this preliminary evaluation and design effort.
- Perform any potholing or field investigations determined necessary to confirm utility locations and configurations.
- Provide for additional hydraulic modeling, if required.

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

- *The sewers in this area were installed many years ago and the City may have limited information on the installation and location of the sewer main and laterals.*
- *Areas along the project alignment are in easements and the City has limited access. It may not be possible to inspect and determine the existing condition of the entire alignment.*
- *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.*

- *The proposed improvements will generally follow the existing gravity sewer alignment and will be within the existing right-of-way (ROW) and easement limits. Evaluation of alternatives that deviate from this alignment may require additional survey and/or fee to evaluate. RH2 will notify the City prior to beginning any work that may deviate from this assumption.*

Following is a detailed description of the tasks that will be completed as part of this Scope of Work.

## CONSULTANT'S SCOPE OF WORK

### TASK 1 – DATA COLLECTION AND SURVEY

**Objective:** Initiate data collection of known available records, plans, and reports relevant to the existing sewer, 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. Contract with a sewer pipeline video inspection contractor to document the condition of the sewer. Review available geotechnical information, perform geotechnical investigations, and prepare findings and recommendations.

#### Approach:

- 1.1 Collect Data:** Obtain from the City and other sources copies of property easements, surveys, plans, modeling, reports, geotechnical investigations, and other available information that is pertinent to the project. Coordinate with the City to locate and pothole Public Works utilities (i.e., water, sewer, storm, etc.) as needed for preliminary planning. Review obtained information and become familiarized with the project and problems experienced.
- 1.2 Provide Topographic and Easement Survey:** Contract and coordinate with the surveyor to provide a horizontal and vertical topographical survey for the existing sewer alignment, including surface features, underground utilities, topography, roadway and utility alignments, and rights-of-way. Property lines and existing easement lines and boundaries within the project area also will be located. Coordinate with the City and utility companies to obtain as-built records of the existing facilities and utilities located along the project alignment. *Survey shall follow RH2's standard topographic survey requirements, including 1-foot contour intervals and topographic information.* Review completed survey and perform site visit to "ground-truth" survey information. Format survey and prepare base alignment plan for design. *The survey will generally follow the existing alignment from Shenandoah Drive to Barker Avenue and will be confined to the ROW and easement limits. It is assumed that the City's Public Works Department will locate and mark all water, sewer, and stormwater utilities prior to surveying. It is also assumed the City will secure the necessary approvals for surveyors' access in easements.*
- 1.3 Perform Video Inspection:** Contract and coordinate with a pipeline video inspection subcontractor to perform a CCTV inspection of approximately 1,150 linear feet of sanitary sewer, and locate and inspect the approximately 20 sewer laterals connected to the mainline. *It is assumed that the City will perform pipe cleaning prior to the CCTV inspection and participate in assisting video contractor in performing the field work and inspection. The fee estimate assumes that the video inspection will focus on the portion of the sewer main that is located within the backyard easements north and east of Hazelwood Drive (that which is not planned for replacement), and that the lateral launches will extend approximately 20 feet beyond the mainline. The extents of the video inspection can be extended for additional fee, if deemed necessary or desired by the City.* Review the video for the location and condition of the sewer line and laterals and recommend repair or replacement of

apparent leaking or deteriorated sections.

- 1.4 Perform Geotechnical and Environmental Review:** Perform a review of existing geologic and environmental data available, and determine if additional field exploration by such means as test pits or borings is recommended for final design. Perform field reconnaissance of proposed alignment to observe visible indicators of geologic/environmental issues or concerns. *It is not envisioned that geotechnical drilling or boring explorations will be performed at this phase of the project.* The focus of this effort will be on an environmental review to identify the requirements and limitations for construction next to and within Coffee Creek. Prepare a brief technical memorandum summarizing field observations and laboratory analyses, and coordinate with City.

**Provided by the City:**

- Utility locate and potholing of existing City utilities.
- As-built record drawings and other relevant information.

**RH2 Deliverables:**

- Topographic survey.
- CCTV inspection report and video.
- Electronic PDF of technical memorandum of geotechnical and environmental requirements.

**TASK 2 – ALTERNATIVES ANALYSIS AND PRELIMINARY DESIGN**

**Objective:** Determine the extent of sewer replacement and upsizing that is necessary based on condition and modeling. Identify, evaluate, and determine the alternatives and approach for performing the work, and prepare a preliminary design to at least the 30-percent level, including a preliminary cost estimate.

**Approach:**

- 2.1 Review Improvements:** Determine the limits of sewer main replacement and upsizing required based on modeling and condition. Coordinate with the hydraulic modeler (B&C) who will update the hydraulic model with survey and field data, and perform additional analyses to confirm the results from the preliminary hydraulic analyses performed during project scoping. Evaluate sewer main and lateral condition and infiltration for additional sections that may require replacement or repair from the sewer CCTV inspection and/or further field observation.
- 2.2 Evaluate Alternatives and Develop Conceptual Design:** Develop alternative approaches and conceptual plans for replacing the sewer main, including relocations, construction method(s) expected to be different for various sections, required access, temporary or permanent easements, and temporary bypass pumping. Evaluate the alternatives and coordinate with the City to develop conceptual plans to describe the recommended approaches. Alternatives will be developed to a level suitable to describe the proposed approach, construction phasing, and cost for general discussion at a conceptual level. Meet with City to review alternatives and select a preferred alternative to advance to preliminary design.
- 2.3 Prepare Preliminary Design:** Prepare preliminary design plans to the 30-percent design level with horizontal and vertical alignment detail for City review. Connection points, phasing, and other significant details will be included. A preliminary opinion of probable construction cost(s) will be developed.

**2.4 Prepare Technical Memorandum:** Prepare a technical memorandum summarizing the alternatives and preliminary design. The technical memorandum will document the modeling, condition, alternatives considered, and the analysis, recommendations, and City decisions of how to proceed with the project, along with a preliminary estimate of construction cost(s). Coordinate with the City to obtain a technical memorandum from B&C summarizing the modeling results and recommendations related to this project.

**RH2 Deliverables:**

- Technical memorandum summarizing the alternatives analysis and preliminary design.
- Preliminary design drawings to the 30-percent design level.
- Preliminary engineer's estimate of probable construction cost based on 30-percent design.

**EXHIBIT A**  
**City of Oregon City**  
**Hazelwood Drive Sewer Replacement - Phase 1**  
**Alternatives Analysis and Preliminary Design**  
**Fee Estimate**

Description	Principal	Project Manager	Project Engineer	Staff Engineer	Engr. Geologist	Environmental Specialist	Administrative Support	Total Hours	Total Labor	Total Subconsultant	Total Expense	Total Cost
Classification Rate	Professional VIII \$216.00	Professional VII \$207.00	Professional VI \$191.00	Professional II \$151.00	Professional VII \$207.00	Professional IV \$172.00	Administrative III \$94.00					
<b>Task 1 Data Collection and Survey</b>												
1.1 Collect Data	-	4	6	8	-	-	2	20	\$ 3,370	\$ -	\$ 280	\$ 3,650
1.2 Provide Topographic and Easement Survey	-	1	2	16	-	-	1	20	\$ 3,099	\$ 36,800	\$ 413	\$ 40,312
1.3 Perform Video Inspection	-	1	2	5	-	-	1	9	\$ 1,438	\$ 5,175	\$ 168	\$ 6,781
1.4 Perform Geotechnical and Environmental Review	2	1	2	-	8	8	3	24	\$ 4,335	\$ -	\$ 151	\$ 4,486
<b>Subtotal</b>	<b>2</b>	<b>7</b>	<b>12</b>	<b>29</b>	<b>8</b>	<b>8</b>	<b>7</b>	<b>73</b>	<b>\$ 12,242</b>	<b>\$ 41,975</b>	<b>\$ 1,011</b>	<b>\$ 55,228</b>
<b>Task 2 Alternatives Analysis and Preliminary Design</b>												
2.1 Review Improvements	2	4	4	7	-	-	1	18	\$ 3,175	\$ -	\$ 275	\$ 3,450
2.2 Evaluate Alternatives and Develop Conceptual Design	2	8	16	16	-	-	2	44	\$ 7,748	\$ -	\$ 359	\$ 8,107
2.3 Prepare Preliminary Design	2	8	24	64	-	-	2	100	\$ 16,524	\$ -	\$ 1,948	\$ 18,472
2.4 Prepare Technical Memorandum	2	8	16	16	-	-	6	48	\$ 8,124	\$ -	\$ 584	\$ 8,708
<b>Subtotal</b>	<b>8</b>	<b>28</b>	<b>60</b>	<b>103</b>	<b>-</b>	<b>-</b>	<b>11</b>	<b>210</b>	<b>\$ 35,571</b>	<b>\$ -</b>	<b>\$ 3,166</b>	<b>\$ 38,737</b>
<b>Hazelwood Drive Sewer Replacement - Phase 1</b>	<b>10</b>	<b>35</b>	<b>72</b>	<b>132</b>	<b>8</b>	<b>8</b>	<b>18</b>	<b>283</b>	<b>\$ 47,813</b>	<b>\$ 41,975</b>	<b>\$ 4,177</b>	<b>\$ 93,965</b>

**EXHIBIT A  
RH2 ENGINEERING, INC.  
SCHEDULE OF RATES AND CHARGES**

**2017 HOURLY RATES**

CLASSIFICATION	RATE	CLASSIFICATION	RATE
Professional	IX	Technician	IV
Professional	VIII	Technician	III
Professional	VII	Technician	II
Professional	VI	Technician	I
Professional	V	Administrative	V
Professional	IV	Administrative	IV
Professional	III	Administrative	III
Professional	II	Administrative	II
Professional	I	Administrative	I

**IN-HOUSE SERVICES**

In-house copies (each)	8.5" X 11"	\$0.09	CAD Plots	Large	\$25.00
In-house copies (each)	8.5" X 14"	\$0.14	CAD Plots	Full Size	\$10.00
In-house copies (each)	11" X 17"	\$0.20	CAD Plots	Half Size	\$2.50
In-house copies (color) (each)	8.5" X 11"	\$0.90	CAD System	Per Hour	\$27.50
In-house copies (color) (each)	8.5" X 14"	\$1.20	GIS System	Per Hour	\$27.50
In-house copies (color) (each)	11 X 17"	\$2.00	Technology Charge	2.5% of Direct Labor	
			Mileage	Current IRS Rate	

**OUTSIDE SERVICES**

Outside direct costs for permit fees, reports, maps, data, reprographics, couriers, postage, and non-mileage related travel expenses that are necessary for the execution of the project and are not specifically identified elsewhere in the contract will be invoiced at cost.

All Subconsultant services are billed at cost plus 15%.

**CHANGES IN RATES**

Rates listed here are adjusted annually. The current schedule of rates and charges is used for billing purposes. Payment for work accomplished shall be based on the hourly rates and expenses in effect at the time of billing as stated in this Exhibit.

## 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

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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.