

**CITY OF OREGON CITY
PERSONAL SERVICES AGREEMENT**

Trillium Park Drive Slide Monitoring

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between the CITY OF OREGON CITY ("City") and **Geotechnical Resources, Inc.** ("Consultant").

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 **June 30, 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 **twelve thousand and 00/100 dollars (\$12,000.00)**.

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 to 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.

To the City: City of Oregon City
PO Box 3040
625 Center Street
Oregon City, OR 97045
Attention: Aleta Froman-Goodrich, PE

To Consultant: George Freitag, CEG
Geotechnical Resources, Inc.
9750 SW Nimbus Avenue
Beaverton, Oregon 97008

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 13th day of March, 2017.

CITY OF OREGON CITY

GEOTECHNICAL RESOURCES, INC.

By: [Signature]
John M. Lewis, P.E.
Title: Public Works Director

By: [Signature]
Title: PRINCIPAL

DATED: 3-13, 2017.

DATED: 3/8, 2017.

Exhibit A
Scope of Work and Fee Estimate for Continuing Geotechnical Services
Trillium Park Drive Landslide
Oregon City, Oregon
Prepared by GRI for the City of Oregon City

(February 28, 2017; Revised March 3, 2017)

BACKGROUND

Following a period of prolonged, intense precipitation in February 2017, the City of Oregon City (City) was notified of a water line damage in the roadway of Trillium Park Drive on the afternoon of February 16, 2017. The water line break caused damage to the asphalt pavement and some tension cracks were visible in the pavement north of the break. The break also caused the pavement to ‘inflate’ upward due to pressure. An unknown amount of water migrated between the pavement and the subgrade causing damage. Water reportedly exited the surface monument area for the existing inclinometer. The water line was shut off by means of valves located north and south of the break area and the road was closed.

On the morning of February 21, 2017, City crews noticed additional pavement cracking and a downed tree in the landslide area and contacted GRI. GRI observed several sets of pavement and ground cracks along Trillium Park Drive, and foundation cracks were visible in the residence at 13776 Canyon Court.

APPROACH AND SCOPE OF WORK

The primary purpose of our work will be to evaluate surface conditions at the site and develop recommendations to assist the City with short- and long-term mitigation options of the landslide with respect to public improvements. Our consultation services will consist of a review of the available data for the site area, a geologic reconnaissance, review operation of field instrumentation, and preparation of a memorandum. The memorandum will summarize our findings and provide our preliminary conclusions and recommendations for various monitoring and mitigation options for the roadway and public utilities in the right-of-way. Due to the rapidly developing nature of the site conditions, some of this work is already in progress.

- 1) Existing maps and technical reports published by the US Geological Survey (USGS) and the Oregon Department of Geology and Mineral Industries (DOGAMI) will be reviewed for pertinent geologic, hydrogeologic, and soils information.
- 2) Airborne laser elevation data collected by lidar instrumentation will be obtained and processed to produce lidar-derived imagery used in the evaluation of topographic features and slope hazards at the site.
- 3) A site reconnaissance will be completed by an experienced geotechnical engineer and engineering geologist from GRI to collect site data and conduct limited surface mapping. The surface mapping will include evaluation of lidar data, geologic mapping, and mapping of other relevant surface data. Particular attention will be directed toward identifying characteristic landslide surface features, such as ground

cracks, hummocks, trees in distressed orientations, springs or seeps, rock mass characteristics (if exposed), and obvious visible signs of potential slope instability.

- 4) GRI will assist the City's Professional Land Surveyor with the placement of survey hubs and crack monitors that will be used to evaluate the changes to the horizontal and vertical position of survey points.
- 5) If possible, data will be collected from the existing inclinometer and vibrating wire piezometer installed in 2006. The data will be evaluated for indications of movement and depth to groundwater.
- 6) GRI will attend and participate in up to two public meetings, if necessary, including assistance with preparation of public presentation materials and working with the project team on content.
- 7) Based on this work, engineering studies and analyses will be accomplished that will lead to preliminary findings concerning slope stability hazards and the feasibility of reducing the risk associated with these hazards. GRI will meet with the City to discuss our preliminary findings. We will provide a summary of potential monitoring and mitigation alternatives, if appropriate, that outlines relative costs, design life, construction feasibility, maintenance, and short- and long-term effectiveness for the various mitigation options, as appropriate. This work will be summarized in a Geotechnical Memorandum.

DELIVERABLES

- 1) Site Visit Reports (SVRs) will be prepared at the direction of the City to document daily observations. Two SVRs have been prepared and submitted as of the date of this scope and fee estimate.
- 2) Geotechnical Memorandum (draft and final).

SCHEDULE AND FEE

As noted above, portions of this work are in progress, and we are in a position to begin immediately on all portions of the proposed work upon receipt of your authorization to proceed. We anticipate with the rapidly changing site conditions, information developed during the course of our work can be submitted to you informally as soon as it becomes available. The fee for the above-described work will be computed on a time-and-expenses basis in accordance with the attached Fee Schedule. We recommend you budget \$12,000 for the work. This amount will not be exceeded without your prior written approval. Our estimated costs for the work are summarized on the attached Breakdown of Costs.

Enclosed: Fee Schedule
Breakdown of Costs



GRI
Beaverton, Oregon

2017 FEE SCHEDULE

<u>Personnel</u>	<u>Rate/Hour</u>
Principal	\$ 215
Associate	\$ 190
Senior Engineer/Geologist	\$ 160
Project Engineer/Geologist	\$ 140
Staff Engineer/Scientist	\$ 115
Engineering Assistant	\$ 90
Contract Administrator	\$ 125
Technical Editor	\$ 120
Drafter	\$ 100
Secretarial Services	\$ 65

Other Charges

Vehicle:	Vehicles will be billed at the current IRS business mileage reimbursement rate.
Fill Control Equipment:	Nuclear Density Gage rental will be billed at \$5 per hour, with maximum charge of \$25 per day or \$125 per week.
Reproduction:	In-house reproduction, \$0.10 per sheet.
Field Instrumentation and Monitoring Equipment:	Due to varied conditions, equipment requirements, location and use, rates for field instrumentation, monitoring, and other specialized equipment will be provided as required.
Subcontractor Services:	Charges for subcontractor services will be computed at cost plus 10%.
Travel and Subsistence:	All charges related to travel and subsistence will be computed at cost.

(LAST REVISED 5/1/2016)



GRI BREAKDOWN OF COSTS

Project Name: **Trillium Park Drive Landslide**

Project Breakdown of Costs (BOC)

3/2/2017

Staff Role/Title:		Principal	Project Engr/Geol	CADD Drafter	Technical Editor	Contract Admin / Accountant				
Staff Name:										
2017 Rate Schedule:		\$ 215.00	\$ 140.00	\$ 100.00	\$ 120.00	\$ 125.00				
Task ID	Task Description	Hrs	Hrs	Hrs	Hrs	Hrs	Total Hours	Total Labor	Direct Expenses	TOTALS
Continuing Geotechnical Services										
1	Existing Data Review	24	44	2	1	2	73	\$11,890.00	\$ 107.00	\$11,997.00
			8				8	\$ 1,120.00		\$ 1,120.00
2	Site Reconnaissance and Field Mapping	8	8				16	\$ 2,840.00	\$ 107.00	\$ 2,947.00
3	Instrumentation Evaluation		4				4	\$ 560.00		\$ 560.00
4	Survey Hub Evaluation		8				8	\$ 1,120.00		\$ 1,120.00
5	Meetings and Consultation	10	8				18	\$ 3,270.00		\$ 3,270.00
6	Geotechnical Memorandum	4	8	2	1		15	\$ 2,300.00		\$ 2,300.00
7	Project Management	2				2	4	\$ 680.00		\$ 680.00
	(Task 2 - Mileage 200 mi @ \$0.535/mi)									
								\$ -		\$ -
Tasks Summary of Hours		24	44	2	1	2	73	\$ 11,890.00	\$ 107.00	\$ 11,997.00
									Project Total: \$ 11,997.00	
									Recommended Budget \$ 12,000.00	



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.

(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
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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, 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, 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 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 appointed shall appoint a third disinterested

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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.