

**CITY OF OREGON CITY  
PERSONAL SERVICES AGREEMENT**

**2020 INFLOW REDUCTION PROJECT (CI 19-017)**

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between the CITY OF OREGON CITY ("City") and **WALLIS ENGINEERING, PLLC, LLC** ("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, 2020**, 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 twenty-two thousand, one hundred and three and 72/100 dollars (\$122,103.72)**.

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: John M. Lewis

To Consultant:

**Wallis Engineering, PLLC, LLC**  
**215 W. 4<sup>th</sup> Street, Suite 200**  
**Vancouver, WA 98660**  
**Attention: Wes Wegner, P.E.**

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 6th day of January, 2020.

CITY OF OREGON CITY

**WALLIS ENGINEERING, PLCC, LLC**

By: Anthony J. Konkol III  
Anthony J. Konkol, III  
Title: City Manager

By: [Signature]  
Title: Principal Engineer

DATED: December 18, 2019

DATED: January 6, 2020

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

DATED: \_\_\_\_\_, 20\_\_.

APPROVED AS TO LEGAL SUFFICIENCY:

By: [Signature]  
City Attorney

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## **PROJECT BACKGROUND**

This project consists of disconnecting known sources of stormwater inflow from the City of Oregon City (City) sanitary sewer system. The City has identified seven sources of inflow, along with the improvements necessary to remove these sources. Each inflow location and proposed improvement is described below:

**16th St & Polk Street Intersection.** Disconnect one stormwater catch basin at the east corner of the intersection from the sanitary sewer and reconnect to an existing storm sewer.

**Polk Street.** Construct a new storm sewer on Polk Street to 16<sup>th</sup> Avenue and connect to an existing storm sewer. Improvement includes approximately 200-feet of storm sewer pipe, one new manhole and new catch basins as required.

**Harding Blvd.** Construct a new storm sewer in Harding Boulevard, connect existing catch basins to new storm sewer, and connect to existing storm sewer systems on Linn Avenue or Electric Street. Improvements include approximately 1,300-feet of storm sewer pipe, seven (7) new manholes, and seven (7) new catch basins.

**Mt. Hood Street.** Construct a new storm sewer in Mt. Hood Street from Warren Street towards Magnolia Street. Improvements include approximately 250-feet of storm sewer pipe and two new manholes.

**Division Street.** Construct a new storm sewer on C St, connect existing catch basins to new storm sewer, and connect to existing storm sewer systems in Division Street or Eluria Street. Improvements include approximately 400-feet of storm sewer pipe, three (3) new manholes, and catch basins as required.

**Brighton Ave.** Construct a storm sewer on Brighton Avenue from Bellevue Avenue towards Creed Street, connect existing catch basins to new storm sewer, and connect to existing storm sewer system.

**Dewey Street.** Construct a storm sewer on Dewey Street from Irving Street and connect to an existing storm sewer system on Molalla Avenue. Improvements include approximately 230-feet of storm sewer pipe and two new manholes.

This scope of work consists of engineering services to design the improvements described above and prepare bidding documents.

## **CONTRACT DURATION**

Contract term shall be from the date contract is fully executed until June 30, 2020.

## **PROJECT TEAM**

Wallis Engineering will serve as the prime consultant for this project, leading a team of subconsultants to complete all the services identified in the specific scope of work. The project team is listed below, with the responsibilities which they will complete.

<i>Consultant</i>	<i>Responsibilities</i>
Wallis Engineering (Wallis)	Civil Engineering
Compass Land Surveying (Compass)	Surveying
GeoDesign Inc.	Geotechnical Engineering

## **SPECIFIC SCOPE OF WORK**

### **TASK 1 PROJECT MANAGEMENT AND ADMINISTRATION**

Provide overall project management and administration through the duration of the project.

#### **1.1 Define Project Objectives**

The project manager will coordinate with City Staff to define the project goals, locations, design criteria, and the project schedule. These items will be included in the final scope of work.

#### **1.2 Project Management and Administration**

Provide management, coordination, and direction to the project design team to complete the project.

Prepare project design schedules outlining design and deliverable milestones. Prepare monthly status reports and schedule updates to be included with consultant invoices. Coordinate project team meetings and prepare meeting agendas and meeting minutes.

This task assumes the following meetings:

- Preliminary Design Review Meeting.
- 90% Design Review Meeting.
- One additional coordination meeting with the City.

#### **1.3 Private Utility Coordination**

Communicate with private utility providers to ensure all potential conflicts with proposed work are addressed. Coordination work will include the following:

- Develop a utility contact information list and email project information letters to all utility companies involved to explain nature of the work.
- Coordinate with private utility providers for relocation of existing utilities as necessary.
- Submit applicable plans to the affected private utility providers. Utility Conflict notices will be sent to utilities following the Preliminary and 90% design submittals.
- Maintain a record of correspondence with utility companies.

#### **Assumptions:**

- Design phase of the project is assumed to be December 2019 – April 2020.
- Construction phase is assumed to be June 2020 – October 2020.
- City project manager or designees will complete all stakeholder coordination, public involvement, property acquisition (if necessary) and lead and obtain all necessary permits.
- A total of three meetings with City staff are assumed as detailed above.
- All coordination with private utilities will be via phone and email.

***Deliverables:***

- Final scope and schedule.
- Monthly status reports and invoices.
- Meeting agendas and minutes.
- Utility contact list and correspondence.

**TASK 2 DATA COLLECTION AND EVALUATION**

Complete background information review and data collection for proposed improvements.

***Task 2.1 Review Existing Data***

Review available background information relating to this project. The anticipated information includes:

- Utility GIS records.
- Existing utility easements.
- Available I/I abatement program data.
- As-built drawing information, as available.
- Existing field conditions.

***Task 2.2 Field Topographic Survey and Base Mapping***

Compass will collect topographic survey, right-of-way (as needed), and monumentation data at each project location to provide a base map for design. The level of detail and scope of needed surveying will vary based on the complexity of each site. On all project sites, collected topographic information will be minimized to that deemed essential to completing the design including horizontal and vertical location of utilities, existing roadway geometry to establish depth of the proposed improvements, and potential conflict structures. In general, collected topographic information will be limited to elements within the existing paved roadway and utilities outside the paved roadway. We anticipated the need to supplement the survey information with field surveying and use of City GIS information.

All sites will include survey information as follows:

- Rims and flowlines of existing catch basins and existing manholes.
- Upstream and downstream existing manholes of gravity systems.
- Underground public and private utilities.
- Utility poles.
- Retaining walls, if immediately adjacent to the roadway.
- Water valves with depth to top of nut.
- Curbs and edge of pavement limits (25' frequency).
- Contours within paved road area (based solely on the information above).
- Monument Recovery.
- Right of Way determination ('C' St. project segment only).

Wallis will supplement the collected topographic survey information with field survey information obtained through site visits, available GIS information and asbuilt information to create the final base map to be used during design. Field survey information will include all relevant features beyond the existing pavement limits not included in the Compass scope of work.

Compass will prepare One (1) easement legal description and map for the proposed easement anticipated between Harding Blvd and Linn Avenue and will be based on existing survey and deed records.

### **Task 2.3 Rock Depth Profiling**

The City has indicated that shallow subsurface rock or boulders may be encountered on the Brighton Ave, Harding St, Mt. Hood St and Dewey St project segments and review of available well logs confirm the possibility of encountering rock during trenching in these locations. GeoDesign will complete subsurface investigations consisting of borings to characterize utility trench excavations, identify depths to hard rock or presence of boulders. Findings will be summarized in a memorandum to support project design.

Geotechnical investigation work to include the following:

- Coordinate and manage the field investigation including preparing traffic control plans, completing utility locates and scheduling subcontractors and GeoDesign field staff.
- Obtain ROW permit from the City of Oregon City.
- Conduct three days of exploratory borings. We estimate up to ten (10) borings will be drilled to depths of up to 15 feet BGS or practical refusal. The borings will be conducted using mud rotary drilling and/or coring if sound basalt rock is encountered.
- Collect soil and rock samples for laboratory testing and maintain a log of subsurface conditions encountered in each boring.
- Complete a laboratory testing program on soil and rock samples collected from the explorations. The specific tests will be selected based on subsurface condition encountered. We have assumed the following laboratory tests for cost estimating purposes:
  - Twelve moisture content determinations in general accordance with ASTM D2216.
  - Two percent fines tests in general accordance with ASTM C117 and/or ASTM D1140.
  - One Atterberg limits test in general accordance with ASTM D4318.
  - Two unconfined compressive strength tests in general accordance with ASTM D7012-09.
- Provide traffic control during the boring explorations.
- Provide general guidelines for dewatering and excavation and recommendations for fill placement and compaction.
- Provide a report summarizing the results of our geotechnical evaluation.

#### **Assumptions:**

- The City will provide any and all available as-built/ record drawing information.
- Any required utility conflict potholing of public utilities that is deemed necessary will be completed by the City. Potholing of private utilities will be completed by the respective private utility companies.
- Geotechnical and/or subsurface investigations are only required on Brighton Ave, Harding St, Dewey St and Mt. Hood St.
- No Pre-Construction Record of Surveys will be required. It is assumed that all disturbed monuments will be replaced within 90 days of disturbance and documented with Post-Construction Record of Surveys as part of future construction tasks. No monument replacements are included in this scope of work.
- One (1) legal description and map is included for the proposed easement. The easement is assumed to be between Harding Blvd and Linn Ave. If the easement is required between Harding Blvd and Electric Ave is required, a supplemental may be required to resolve existing conflicting Right of Way surveys and deeds on record with Clackamas County. The Right of Way on Linn Ave in this area has historically been challenging to resolve.

*Deliverables:*

- Topographic base map in AutoCAD version 2018 (or newer) format.
- Geotechnical Findings Summary Report.

### **TASK 3 DESIGN**

Provide preliminary design, 90% design, and final design contract documents based on City review comments.

#### **Task 3.1 Preliminary Design**

Complete preliminary design for all segments and a feasibility analysis for the project areas that may have multiple alternatives. Prepare a brief memorandum summarizing the findings and comparing costs of each evaluated alternative as well as providing horizontal and vertical alignments for all segments. Project segments with alternatives to be evaluated are as follows:

- Harding Blvd: Comparison of utilizing the existing easement on 178 Harding Blvd versus utilizing the existing easement on 152 Harding Blvd to discharge the new storm system. The design schedule may be impacted if horizontal direction drilling (HDD) is considered as an alternative due to the availability to schedule subsurface drilling on the project and ability to confirm that subsurface soil conditions are conducive for HDD construction.
- Division St: Comparison of routing new storm sewer north on C Street to Division and then east on Division to Eluria St versus routing new storm sewer east within the existing alley and discharging to Eluria St.

Additional elements to be included in the Preliminary Design include:

- Identification of all potential utility conflicts with the proposed storm sewer alignments and existing public or private utilities. This information will be used to coordinate efforts identified in Task 1.3.
- A closed conveyance piping capacity analysis for the Mt. Hood St. project area. The capacity analysis will include a stormwater basin delineation for the existing outfall, basin delineation of the catch basin proposed to be disconnected from the sanitary and connected to the existing outfall, and an evaluation of the flow rate and velocity change at the outfall as a result of the project.
- A short narrative and supporting documentation justifying compliance with Chapter 17.49 NROD (specifically, Chapter 17.49.140) for the Mt. Hood St. improvements. It is assumed that no trees will be removed and that utility upgrades are exempt activities.

#### **Task 3.3 90% Design**

Based on the preliminary design review comments provided by the City, Wallis will assemble and submit electronic 90% plans, specifications, and opinion of cost to the City for review. The proposed specifications will be based on a contract bid item format and the “2018 Oregon State Department of Transportation Standard Specifications for Construction.” The 90% Design package will be submitted to the City in electronic format.

The 90% plan set, and all subsequent plan sets, are anticipated to include the following:

<i>Title</i>	<i># of Sheets</i>
Cover and Drawing Index	1
General Notes and Legend	1
Erosion Control Notes & Details	1
Sheet Layout Map	1
16 <sup>th</sup> & Polk St Plan & Profile	1
Polk St Plan & Profile	1
Harding Blvd Plan & Profile	4
Mt. Hood St Plan & Profile	1
Division St Plan & Profile	2
Brighton Ave Plan & Profile	1
Dewey St Plan & Profile	1
Details	2
Standard Details	3
<b>Total Sheets:</b>	<b>20</b>

### **Task 3.4 Final Design**

Finalize all construction drawings and project specifications. Prepare a final opinion of cost based on the final plans and specifications. The full-size construction plans will be 22" x 34" with a City of Oregon City title block. The title block will incorporate the Wallis Engineering logo as well as the logos of the design team subconsultants. Plans included in the Contract Documents will be printed at half scale (11" x 17"). Final plans will be delivered to the City in electronic format.

#### **Assumptions:**

- The City will provide information on all existing easements and will provide legal interpretation of all easement language as needed. It is anticipated that one (1) new easement will be required on Harding Boulevard to allow the proposed storm sewer to be connected to existing systems on Linn Avenue or Electric Boulevard.
- The City will negotiate all new easements needed to complete project with the respective land owners.
- No upstream or downstream capacity analysis will be completed with the exception of Hood Avenue. All pipe is to be 12-inch diameter and assumed to have adequate capacity at minimum slope.
- No evaluations of existing outfalls will be completed with exception to the outfall of the Mt. Hood Avenue project area as described in detail above.
- No water quality or quantity detention/retention improvements will be completed.
- No stormwater improvements to address hydromodification or treatment will be required as part of these improvements.
- All pavement restoration will be as identified in the City's standard details. Pavement design will not be required.



- Traffic control plans included in the Contract plans will be limited to general notes and ODOT standard plans. No site-specific traffic control plans will be prepared. It is assumed that the Contractor will prepare detailed and site-specific traffic control plans.
- Dewatering design (if needed) will be provided by the Contractor. The City will provide a dewatering specification template.
- All front-end specifications, and City standard general special provisions will be provided by the City.
- All permitting requirements will be completed by the City.

***Deliverables:***

- Preliminary Design and Alternatives Memorandum.
- Electronic versions of the preliminary, 90% and final PS&E.

**TASK 4 BIDDING SERVICES**

Wallis Engineering will provide bidding services to the City, including responding to bidder's questions and preparing addenda (as needed). A summary sheet of all bidder questions and responses will be provided to the City following the opening of bids, or as requested.

***Assumptions:***

- City will distribute the contract documents, maintain a plan holder's list, and distribute addenda as needed.
- Wallis Engineering will not attend the bid opening.

***Deliverables:***

- Addenda (as needed).
- Bidder question and response summary sheet.
- Recommendation of Award.

**Agreement**  
**Exhibit B - Fee Estimate**  
**City of Oregon City - Inflow Source Disconnection Project**  
**WE #1495A**  
November 2019

TASK		SE	E1	E2	E3	E4	E5	E6	SD	Insp.	T1	TW	C1	Staff Cost	Expenses	Subconsultants		Total Cost
																Compass	GeoDesign	
		\$184.28	\$152.87	\$142.40	\$124.60	\$101.56	\$95.28	\$84.81	\$121.46	\$95.28	\$95.28	\$84.81	\$69.10					
<b>Task 1</b>	<b>Project Management and Administration</b>																	
1.1	Define Project Objectives		2	16										4	\$ 2,860.54			\$ 2,860.54
1.2	Project Management and Administration			16			6							8	\$ 3,402.88	\$ 100.00 (M)		\$ 3,502.88
1.3	Private Utility Coordination			2			8				2				\$ 1,287.84			\$ 1,287.84
	<b>TASK 1 SUBTOTAL</b>	<b>0</b>	<b>2</b>	<b>34</b>	<b>0</b>	<b>8</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>12</b>	<b>\$ 7,551.26</b>	<b>\$ 100.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 7,651.26</b>
<b>Task 2</b>	<b>Data Collection and Evaluation</b>																	
2.1	Review of Existing Data			4			6								\$ 1,141.28	\$ 35.00 (M)		\$ 1,176.28
2.2	Field Topographic Survey and Base Mapping			8			16				12				\$ 3,807.04	\$ 70.00 (M)	\$ 40,007.00	\$ 43,884.04
2.3	Rock Depth Profiling		2	4											\$ 875.34		\$ 31,240.00	\$ 32,115.34
	<b>TASK 2 SUBTOTAL</b>	<b>0</b>	<b>2</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>22</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>\$ 5,823.66</b>	<b>\$ 105.00</b>	<b>\$ 40,007.00</b>	<b>\$ 31,240.00</b>	<b>\$ 77,175.66</b>
<b>Task 3</b>	<b>Design Phase</b>																	
3.1	Preliminary Design		6	24			32				48			1	\$ 13,245.04	\$ 35.00 (M)		\$ 13,280.04
3.2	90% Design		8	8			32	40			40			6	\$ 13,649.08	\$ 35.00 (M)		\$ 13,684.08
3.3	Final Design		4	12			8	24			20			8	\$ 7,877.88	\$ 35.00 (M)		\$ 7,912.88
	<b>TASK 3 SUBTOTAL</b>	<b>0</b>	<b>18</b>	<b>44</b>	<b>0</b>	<b>52</b>	<b>96</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>108</b>	<b>0</b>	<b>15</b>	<b>\$ 34,772.00</b>	<b>\$ 105.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 34,877.00</b>
<b>Task 4</b>	<b>Bidding Services</b>																	
	Bidding Services		8				8							6	\$ 2,399.80			\$ 2,399.80
	<b>TASK 4 SUBTOTAL</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>\$ 2,399.80</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,399.80</b>
	<b>GRAND TOTAL</b>	<b>0</b>	<b>30</b>	<b>94</b>	<b>0</b>	<b>60</b>	<b>132</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>122</b>	<b>0</b>	<b>33</b>	<b>\$50,546.72</b>	<b>\$310.00</b>	<b>\$ 40,007.00</b>	<b>\$ 31,240.00</b>	<b>\$ 122,103.72</b>

Depending on availability, actual staff usage may not match the above estimated hours breakdown. Billing rates for all staff are listed in the Fee Summary.

<b>FEE SUMMARY</b>			
Staff	Hours	Rate	Fees
SE - Senior Engineer	0	\$ 184.28	\$ -
E1- Engineer 1	30	\$ 152.87	\$ 4,586.10
E2 - Engineer 2 (PM)	94	\$ 142.40	\$ 13,385.60
E3 - Engineer 3	0	\$ 124.60	\$ -
E4 - Engineer 4	60	\$ 101.56	\$ 6,093.60
E5- Engineer 5	132	\$ 95.28	\$ 12,576.96
E6 -Engineer 6	0	\$ 84.81	\$ -
SD- Senior Designer	0	\$ 121.46	\$ -
Inspector	0	\$ 95.28	\$ -
T1 - Technician 1	122	\$ 95.28	\$ 11,624.16
TW- Technical Writer	0	\$ 84.81	\$ -
C1 - Clerical 1	33	\$ 69.10	\$ 2,280.30
<b>Total Fees from Staff</b>			<b>\$ 50,546.72</b>
<b>Subconsultant</b>			<b>Fees</b>
Compass			\$ 40,007.00
GeoDesign			\$ 31,240.00
<b>Total Fees from Subconsultants</b>			<b>\$ 71,247.00</b>
<i>NOTE: Fee includes 10% markup</i>			
<b>Expenses</b>			<b>Cost</b>
Printing (P)		\$	\$ -
Mileage (M)		\$	\$ 310.00
<b>Total Fees from Expenses</b>		\$	<b>\$ 310.00</b>
<b>TOTAL BUDGET</b>		\$	<b>\$ 122,103.72</b>

## **EXHIBIT B**

### **RATE SCHEDULE**

**Rates are effective thru December 31, 2019**

<u>Staff</u>	<u>Hourly Rate</u>
Senior Engineer	\$184.28
Engineer 1	\$152.87
Engineer 2	\$142.40
Engineer 3	\$124.60
Engineer 4	\$101.56
Engineer 5	\$95.28
Engineer 6	\$84.81
Senior Designer	\$121.46
Inspector	\$95.28
Technician 1	\$95.28
Technical Writer	\$84.81
Clerical 1	\$69.10

These hourly rates include in-house office expenses, photocopying, and other incidental items. Mileage will be reimbursed at the current standard IRS rate. Outside expenses will be billed at cost plus 10%.

## 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 in this Agreement, nor shall City pay Consultant any fees or costs that City reasonably disputes.

3. Independent Consultant Status.

(a) Consultant is an independent consultant 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, email, 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 the 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.

5. No Third-Party Beneficiaries. City and

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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 the 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 the Consultant under this Agreement and, unless Consultant is subject to back-up withholding, the 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 the 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, the 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 to the 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 the City. The City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to the 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.

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

Consultant shall comply with all federal, state, and 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 \$2,000,000 combined, single-limit, per-occurrence/\$4,000,000 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.

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

14. Legal Expenses. In the event legal action is brought by City or Consultant against the other to 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. To the extent there is a conflict, the terms of the Personal Services Agreement will control over the terms of the standard conditions. To the extent there is a conflict between the terms of the standard conditions and any other document, including the scope of services, the terms of the standard conditions shall control those other terms.

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

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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 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.