

CITY OF OREGON CITY PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement is entered into between Rebecca Schaleger (hereinafter, "Prosecutor") and the City of Oregon City ("the City") for the limited purpose of retaining Prosecutor to provide legal assistance in Oregon City Municipal Court.

RECITALS

A. City maintains a Municipal Court for the prosecution of criminal misdemeanors, traffic violations and municipal code violations.

B. City requires the services of a prosecutor for the purposes of screening cases, filing cases and performing all other functions normally associated with a prosecutor in a municipal court.

C. Prosecutor is capable and prepared to provide such services as City requires, under the terms and conditions set forth below.

The parties agree as follows:

AGREEMENT

1. **Independent Contractor:** Prosecutor has been engaged by the City to provide certain limited services to the City which shall be referred to in this Agreement as the "Services." The parties recognize and agree that Prosecutor is acting as an independent contractor, and not as an agent or employee of the City. As an independent contractor, Prosecutor is not eligible for, and shall not participate in, workers' compensation, retirement, insurance or other benefits afforded to employees of the City. Prosecutor waives any and all rights that Prosecutor might have under the City's welfare, pension, profit-sharing or other benefit plans.

The City shall not withhold or pay any federal, state or local income or payroll tax of any kind on behalf of Prosecutor. Prosecutor acknowledges and agrees that she is solely responsible for the payment of any income or other taxes related to the Agreement, and indemnifies and holds the City harmless for its failure to withhold or pay such income or payroll taxes.

Nothing in this Agreement shall create any partnership, joint venture, employment relationship or similar relationship between Prosecutor and the City. Prosecutor will not represent that she is the City's employee or agent nor enter into any agreement on the City's behalf. Neither party can be bound by the other to any contract, arrangement or understanding except with that party's prior written consent.

In the event that Prosecutor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Prosecutor under the terms of this Agreement, to the full extent of any benefits or other remuneration Prosecutor receives (from City or third party) as

a result of said finding and to the full extent of any payments that City is required to make (to Prosecutor or to a third party) as a result of said finding.

2. **Scope of Services:** The Services shall consist of those listed in Exhibit A, attached hereto and by this reference incorporated herein. These Services are to include Community Enforcement issues including prosecution. Prosecutor will provide all equipment and supplies reasonably necessary to perform services. Prosecutor will perform the Services in a professional manner, and Prosecutor is responsible for any deficiencies in her work product or Services. Subject to the conditions of this Agreement, Prosecutor will retain control over the manner in which she performs the Services. Prosecutor will not subcontract any Services and will personally perform all Services except as provided herein.

3. **Compensation:**

a. City agrees to pay Prosecutor a flat rate of \$52,980 per year to be paid in even monthly payments of \$4,415 per month. The stated compensation includes the cost of providing discovery materials to defense attorneys and/or defendants.

b. In the event that new cases exceed 1,200 per calendar year, additional new cases will be paid by City to Prosecutor at the rate of \$50 per case. New cases do not include traffic crimes and infractions actually filed by the police or cases reviewed and "no complained" by Prosecutor. For the purposes of this agreement, the calendar year begins July 1 of one year and runs through June 30 of the following year.

c. City agrees to pay Prosecutor within 30 days after receipt of Prosecutor's itemized statement. Any amounts disputed by City may be withheld pending settlement of the dispute. In the event of disputed amounts, all undisputed amounts will be paid within 30 days of the receipt of Prosecutor's itemized statement.

d. City certifies that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.

4. **Term:** The Term of this Agreement shall be from July 1, 2017 through June 30, 2019, unless sooner terminated or modified pursuant to provisions set forth below. This term may be extended by mutual written agreement of the parties. Unless otherwise specified, any renewal of this Agreement shall be for a two (2) year duration. If any changes in scope, conditions or compensation are proposed, notice of such changes shall be in writing and shall be provided at least sixty (60) days prior to the expiration of this agreement.

5. **Termination:**

a. This agreement may be terminated without cause prior to the expiration of the agreed upon term by:

- (1) Mutual written consent of parties; or
- (2) Either party upon 30 days' written notice to the other, delivered by certified mail or in person.

b. Upon written notice of early termination, City shall immediately provide to Prosecutor a written statement regarding cessation of services to be performed under this Agreement.

c. An 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 or Prosecutor provided in this Agreement relating to defaults by either party shall not be exclusive and are in addition to any rights and remedies provided by law or contained within this agreement.

6. **Cancellation for Cause:** City may immediately cancel all or any part of this Agreement, effective upon delivery of written notice to Prosecutor by certified mail or in person, if Prosecutor fails to provide services called for by this Agreement within the time specified or any extension thereof; if Prosecutor fails to perform the work of this Agreement in accordance with its terms after receipt of 10 days' written notice from the City; or in the event of any of the following: insolvency of Prosecutor; voluntary or involuntary petition in bankruptcy by or against Prosecutor; appointment of a receiver or trustee for Prosecutor; or an assignment for benefit of creditors of Prosecutor. Damages for breach shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

7. **Assignment:** In the event that the Prosecutor shall be unavailable to perform her duties due to illness, personal leave, unanticipated personal needs or other valid reasons, Prosecutor shall, at her own expense, make arrangements for a *pro tem* prosecutor. A *pro tem* prosecutor shall be selected from a list of qualified individuals provided by Prosecutor and approved by the City Manager.

8. **Conflicts of Interest:** In the event prosecutor cannot handle a particular case because of a conflict of interest, as defined in Oregon Rules of Professional Conduct 1.7-1.10, the prosecutor will make arrangements for a *pro tem* prosecutor to handle the case at the City's expense within the City's budgeted capacity.

9. **Screening of Cases and Prosecution:** City agrees that all potential filed criminal cases shall be screened by Prosecutor prior to filing. City also agrees that all decisions regarding filing a case, not filing a case, plea negotiations, trial procedures and all other policies for prosecution of criminal cases shall be within the sole discretion of Prosecutor. City agrees to file no criminal case without prescreening by Prosecutor.

10. **No Fringe Benefits:** As an independent contractor, Prosecutor is not eligible for, and shall not participate in, workers' compensation, retirement, insurance or other benefits afforded to employees of the City. Prosecutor waives any and all rights that Prosecutor might have under the City's welfare, pension, profit-sharing or other benefit plans.

11. **Expenses:** The City shall not be responsible for any expenses paid or incurred by Prosecutor unless otherwise agreed in advance in writing.

12. **Federal, State and Local Taxes:** The City shall not withhold or pay any federal, state or local income or payroll tax of any kind on behalf of Prosecutor. Prosecutor

acknowledges and agrees that she is solely responsible for the payment of any income or other taxes related to the Agreement, and indemnifies and holds the City harmless for its failure to withhold or pay such income or payroll taxes.

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

14. **Compliance With Laws:** Prosecutor will (a) comply with all federal, state and local laws, ordinances, regulations and orders with respect to performance of the Services, (b) file all reports relating to the Services (including, without limitation, tax returns), (c) pay all filing fees and federal, state and local taxes applicable to Prosecutor's business as the same shall become due, and (d) pay all amounts when due required under local, state and federal law related to Prosecutor's business, including, but not limited to, workers' compensation coverage, unemployment insurance and any other required employee benefits.

15. **Disclaimer:** The City disclaims any responsibility for the safety of Prosecutor's workplace, and Prosecutor agrees to solely assume the risk of, and indemnify the City for, any injury or damage to persons or property arising out of or related to the Services contemplated under this Agreement.

16. **Insurance; Risk of Loss:** Prosecutor will maintain insurance policies (including, without limitation, professional liability insurance and statutory workers' compensation insurance) that are sufficient to protect Prosecutor's business against all applicable risks. Prosecutor will be liable for all loss or damage, other than ordinary wear and tear, to the City's property in Prosecutor's possession or control. In the event of any such loss or damage, Prosecutor will pay the City the full current replacement cost of such equipment or property within 30 days after its loss or damage.

17. **Protection of City Property:** All work performed by Prosecutor under this Agreement shall be the property of City. All records, files, manuals, client lists, forms, materials, supplies, computer programs, and other information or materials furnished to Prosecutor by the City, used on its behalf, or generated or obtained during the course of providing the Services are the property of the City (collectively "City Property"). Prosecutor will use City Property for the sole use and benefit of the City and will take all reasonable precautions to safely secure and preserve such property. Prosecutor, except as necessary for the benefit of the City and to provide the Services, agrees not to make or cause to be made any copies, duplicates or other reproductions, or abstracts or summaries, of any City Property. Upon termination of this Agreement, and at any other time upon the City's request, or when Prosecutor is unable to continue in the required duties, Prosecutor will immediately deliver to the City or its authorized representative, all of the City Property. The parties agree to comply with all confidentiality provisions required of any applicable LEDS agreement. Prosecutor shall retain no copies of any City Property. The parties agree that Prosecutor's laptop computer, hardware, and software programs are Prosecutor's property and are not City Property.

18. **Right to Inspect/Reports:** City shall be afforded the right to inspect Prosecutor's work and have access to all case files, books, records, correspondence, instructions, receipts, vouchers and documents of every description pertaining in and manner to Services. Prosecutor shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the prosecution of any case, such statements, certificates, approvals and copies of proposed and executed plans and claims and other information relative to the prosecution of a case as may be requested by City. Prosecutor shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as part of the prosecution of a case. Such documents or reports shall become City Property.

19. **City's Responsibility:** City shall furnish Prosecutor with all available information, date and materials pertinent to the execution of this Agreement. City shall cooperate with Prosecutor in carrying out the work herein and shall provide adequate staff for liaison with Prosecutor. City's duties shall include, but not be limited to, providing Prosecutor with one copy of all discoverable materials and a single copy of the proposed defendant's criminal history in whatever forms available. City also agrees to be responsible for serving any subpoenas necessary for the prosecution of filed cases.

20. **Indemnification:**

a. **Tort Indemnity:** In the event of any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission of Prosecutor occurring in the performance of duty, the provision of the Oregon Revised Statutes 30.285 and 30.287 shall govern.

b. **Other Indemnity:** Prosecutor will indemnify, defend and hold the City (and the City's agents and contractors) harmless from all claims, damages, losses, and expenses (including attorneys' fees) arising out of or resulting from any claim, action or other proceeding (including any proceeding by any of Prosecutor's employees, agents or other contractors) that is based upon (a) Prosecutor's breach of this Agreement, (b) a claim that Prosecutor is not an independent contractor, or (c) any negligent act or omission of Prosecutor that is not covered by the provisions of the Oregon Revised Statute 30.285.

c. **General Liability Insurance:** Prosecutor hereby certifies and warrants that she maintains general office liability insurance. Said insurance shall be maintained throughout the duration of this Agreement. Within ten (10) days after the execution of the Agreement, Prosecutor shall furnish City a certificate evidencing the dates, amounts and types of insurance that has been procured pursuant to this Agreement. Prosecutor will provide for not less than 30 days' written notice to City before the insurance policies may be revised, cancelled or allowed to expire. Prosecutor shall not alter the terms of any policy without prior written authorization from City. The provisions of this subsection apply fully to Prosecutor, her consultants and agents.

d. **Professional Liability Insurance:** Prosecutor hereby certifies and warrants that she maintains full professional liability coverage as directed by the Oregon State Bar and that said coverage is in effect at all times during the term of this Agreement.

21. **Waiver:** Failure to insist upon strict compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition, nor shall any waiver or relinquishment of any right or power under this Agreement at any one or more times be deemed a waiver or relinquishment of such right or power at any other time.

22. **Amendment:** No waiver, amendment or modification of this Agreement or any portion thereof, including any future representations that are inconsistent with the terms set forth herein, shall be valid unless made in writing and duly executed by each party hereto.

23. **Applicable Law/Venue/Jurisdiction:** This Agreement shall be governed by, and construed and enforced in accordance with, the substantive and procedural laws of the State of Oregon without regard to rules governing conflicts of law applicable to contracts made and to be carried out in Oregon.

24. **Attorney Fees:** In the event legal action is brought by City or Prosecutor 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 the court. "Legal action" shall include matters subject to arbitration and appeals.

25. **Compliance with ORS 670.600:** Prosecutor acknowledges that for all purposes related to this Agreement, Prosecutor is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an agent or employee of City. Prosecutor warrants that she understands and agrees that:

- (1) The City will not control the means or manner of how Prosecutor will provide the labor or services, other than specifying the desired results;
- (2) Prosecutor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for Prosecutor to conduct the business;
- (3) If licensure is required under ORS chapter 671 or 701, Prosecutor will ensure that she is licensed;
- (4) Prosecutor is customarily engaged in an independently established business (that is, Prosecutor meets 3 out of the 5 requirements below):
 - (a) Maintains a business location that is separate from the business or work location of the City, or that is in a portion of the Prosecutor's residence that is used primarily for business.
 - (b) Bears the risk of loss related to the business or the provision of services as shown by factors such as:
 - (A) The person enters into fixed-price contracts;

- (B) The person is required to correct defective work;
- (C) The person warrants the services provided; or
- (D) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.

(c) Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

(d) Makes a significant investment in Prosecutor's business through means such as purchasing tools or equipment necessary to provide the services; paying for the premises or facilities where the services are provided; or paying for licenses, certificates or specialized training required to provide the services.

(e) Has the authority to hire and fire other persons to provide or to assist in providing the services and has the authority to fire those persons.

26. **Severability:** If any clause or provision in this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, that clause or provision shall be void and the remainder of this Agreement shall remain in full force and effect.

27. **Entire Agreement:** This Agreement contains the entire agreement of the parties. This Agreement shall terminate and supersede any prior written or oral agreements or understandings between the parties regarding the subject matter of this Agreement.

28. **Acknowledgment:** Prosecutor acknowledges that she has read this Agreement, has had an opportunity to consult with an attorney regarding its terms, fully understands the meaning and significance of such terms, and accepts and signs this Agreement as her own free act and in full and complete understanding of its present and future legal effect.

By signing below, each of the parties enters into this Agreement as of the date below.

CITY OF OREGON CITY

PROSECUTOR (Rebecca Schaleger)

By: _____
Printed Name: Tony Konkol
Its: City Manager

Date: _____

Address: 625 Center Street
Oregon City, OR 97045

By: _____
Printed Name: Rebecca Schaleger
Federal Taxpayer ID #: _____

Date: _____

Address: 160 Portland Avenue
Gladstone, OR 97027

By: _____
Wyatt Parno, Finance Director

Approved as to Legal Sufficiency:

By: _____
City Attorney

EXHIBIT A **SCOPE OF SERVICES**

GENERAL STATEMENT OF DUTIES: Provides professional legal services and advice to Municipal Court staff and Community Code Enforcement staff.

DUTIES: Prosecutor's duties may include any or all of the following (these examples are not exhaustive and do not necessarily include all of the services Prosecutor may be expected to provide):

1. Drafts and reviews complaints, orders, agreements, and other legal documents. Provides oral and written opinions on these matters as required.
2. Conducts legal research, prepares memoranda and provides advice to Municipal Court staff and Community Code Enforcement staff on a wide range of topics, issues and concerns.
3. Represents City of Oregon City in Municipal and State Courts upon appeal and wide variety of administrative proceedings.
4. Provides all discovery materials to defense attorneys and/or defendants.
5. Assists in the development of legislative and administrative policies.