

CITY OF OREGON CITY PERSONAL SERVICES AGREEMENT

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between the CITY OF OREGON CITY ("City") and Wiser Rail Engineering ("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 July 31, 2019, 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 \$10,000.

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. **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.

6. **Notices.** Any notices, required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses below. 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. Bills, invoices, reports or other documents can be sent by email or United States mail.

To the City:

City of Oregon City
City PO Box 3040

625 Center Street
Oregon City, OR 97045
Attention: City Manager

To Consultant:

Wiser Rail Engineering
22750 SW Miami Dr.
Tualatin, OR 97062
Attention: Tom Wiser

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

7. 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 25 day of October, 2018.

CITY OF OREGON CITY

WISER RAIL ENGINEERING

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

By: Tom Wiser
Title: Sole Proprietor

DATED: 10-31, 2018.

DATED: 25 October, 2018.

By: Eric Underwood
Title: Economic Development Manager

APPROVED AS TO LEGAL SUFFICIENCY:

By: [Signature]
City Attorney



October 24, 2018

Eric Underwood
City of Oregon City
625 Center Street
Oregon City, OR 97045

Re: Oregon City Quiet Zone Technical Analysis, Plan for Implementation

Dear Mr. Underwood,

I am pleased to present to you this proposal for rail engineering services for the review and technical analysis of the quiet zone (QZ) at 10th and 11th streets in Oregon City. This proposal is composed of the following sections: Project Understanding, Scope of Work, Fee Estimate, and Schedule.

Project Understanding

The City of Oregon City desires to develop a quiet zone through the City impacting crossings at 10th and 11th. 11th is currently a passive pedestrian crossing that is closed to vehicular access with gates on either side of the crossing for over height vehicle access. There are channelization gates on the south side to direct pedestrians to look both ways for approaching trains. The north sidewalk has limited additional safety measures. Union Pacific Railroad (UP) is recommending upgrading the crossing from passive to active with lights and gates and ODOT Rail is recommending tactile strips and possibly channelization gates on both sides. The City will look into video surveillance to determine if the traffic is sufficient to keep the crossing open.

10th street is an at-grade vehicular crossing currently with potential issues related to Dutch Brothers access and a new development requiring access. The City has recently installed the Tuff Curb median to prevent left turn in either direction and needs to have the ODOT Rail Order updated to reflect this change. Also, if required, they are agreeable to closing the Dutch Brothers driveway on 10th. The development needs a driveway access close to the crossing due to the configuration of the site development. ODOT Rail and UP suggested a number of items may need to be implemented to upgrade the crossing to quiet zone status.

The City is concerned about the costs to implement a quiet zone and is interested in Wiser Rail developing a brief technical analysis of the crossings and preparing a plan for implementing this quiet zone.

Engineering Scope of Work

The specific scope tasks are as follows:

- Project management.
- Site review of conditions.
- Coordination with the the City of Oregon City, ODOT Rail, the FRA and Union Pacific Railroad.
- Review documents, QZ diagnostic meeting notes and previous correspondence.

- Prepare brief technical analysis memorandum.
- Prepare a plan for implementing the quiet zone.
- Prepare an opinion of probable cost.
- Prepare a scope of surveying that will be needed during finalization.
- Prepare conceptual sketch of SSM's for both crossings utilizing City aerial photography and contours.

Fee Estimate

The fee estimates inclosed has been prepared with the understanding that the project will be billed on a time and materials basis for the scope of work outlined above. If the scope of work changes from that listed in this proposal, then there will necessarily be a revision to the fee estimate based upon current year standard hourly rates. Current 2018 hourly rate is \$245 per hour. Unless otherwise noted, all hourly rates not completed on the project by July of 2019 will be adjusted to current year standard rates thereby necessitating an increase in the contract amount. The project will be billed monthly with the billings comprised of the time and materials spent on the project completed to date.

Task	Description	Amount
I	QZ Technical Analysis, Implementation Plan	\$10,000
	Totals:	\$10,000

Assumptions

- Topographic surveying is outside the scope of this proposal.
- Final plans are outside the scope of this proposal.
- The ODOT Rail application is outside the scope of this proposal. We have included scope for determining the FRA requirements for the QZ but have not included budget hours to complete the QZ application.

Schedule

The work outlined in this proposal will be initiated within one week of receiving a signed copy of this proposal and the schedule will be coordinated between the City of Oregon City and the current work load of Wisner Engineering. Considering the schedule will be dependent upon timely responses from UPRR, ODOT Rail and the FRA, efforts will be made to complete the draft memo within 3-weeks and then the final 2-weeks following City review of the draft memo.

The General Conditions, together with this Proposal, dated: 18 October 2018,

To: City of Oregon City

Re: 18022 - City of Oregon City QZ

represents the entire and integrated agreement between the Owner and the Engineer and supersedes all prior

negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both Owner and Engineer.

I appreciate the opportunity to prepare this proposal. If this Proposal meets with your approval, please sign and return one original copy of this Proposal to me. If there are any questions concerning any of the items above, or if you have any additional questions or concerns, please give me a call.

Very truly yours,



Thomas W. Wiser, P.E.

Consulting Railway Engineer

I accept the terms and conditions of this Proposal and hereby authorize Thomas W. Wiser, P.E. to proceed with the work, as outlined herein.

Signature _____ Organization _____

Title _____ Date _____

EXHIBIT A

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

1. Contractor Identification. Contractor shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Contractor'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 Contractor within thirty (30) days after receipt of Contractor'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 Contractor any fees or costs that City reasonably disputes.

3. Independent Contractor Status.

(a) Contractor 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) Contractor 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. Contractor 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. Contractor provides services for two or more persons within a 12 month period or routinely engages in advertising, solicitation or other marketing efforts. Contractor makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and

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

(c) Contractor 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). Contractor shall furnish the tools or equipment necessary for the contracted labor or services. Contractor agrees and certifies that:

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

(e) Contractor agrees and certifies that it is licensed to do business in the State of Oregon and that, if Contractor 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 Contractor, delivered by certified mail, email, or in person.

(b) Upon receipt of notice of early termination, Contractor 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 Contractor 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

Contractor 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) Contractor shall:

- (i) Make payment promptly, as due, to all persons supplying to Contractor 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 Contractor under this Agreement and, unless Contractor is subject to back-up withholding, the City will not withhold from such compensation or payments any amount(s) to cover Contractor'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 Contractor 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 Contractor by reason of this Agreement.

(c) The payment of a claim in this manner shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.

(d) Contractor and subcontractors, 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. SubContractors and Assignment.

Contractor 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 Contractor.

8. Access to Records. City shall have access to all books, documents, papers and records of Contractor 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 Contractor 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 Contractor that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Contractor 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 Contractor 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. Contractor 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

Contractor 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, Contractor 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. Contractor 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. Contractor acknowledges responsibility for liability arising out of and to the extent caused by Contractor's negligent performance of this Agreement and shall hold City, its officers, agents, Contractors, 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 Contractor, or the agents, Contractors or employees of Contractor provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Contractor certifies that Contractor has qualified for workers' compensation as required by the State of Oregon. Contractor 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 Contractors of Contractor shall maintain such insurance.

(c) Comprehensive, General, and Automobile Insurance. Contractor shall maintain comprehensive general and automobile liability insurance for protection of Contractor 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, Contractor's operation, each in an amount not less than \$2,000,000 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 Contractor.

14. Legal Expenses. In the event legal action is brought by City or Contractor 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. "Losing party" shall be defined (1) as a claimant that is awarded less than net 50 percent of its affirmative claim, after any offsets for claims or counterclaims by the other party, and (2) as a defendant/respondent against whom a net award of 50 percent or more of a claimant's claim is granted. "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.

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

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 Contractor 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. Contractor 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. Contractor 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 Contractor. Copies as requested shall be provided free of cost to City.

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

24. 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.