

**STANDARD TERMS AND CONDITIONS
FOR AGREEMENT TO FURNISH CONSULTING SERVICES
TO THE CITY OF STAYTON, OREGON**

For

Project Name

ARTICLE I: SCOPE

For consideration set forth in Article V, the firm of **Consultant Name**, a professional consulting firm, hereinafter referred to as Consultant, as an independent contractor, agrees to provide consulting services to the City of Stayton, Oregon, a municipal corporation, hereinafter referred to as the CITY, for the work described in this agreement and **Attachment A** (Scope of Work), **Attachment B** (Engineer Fee Estimate) that incorporates these Standard Terms and Conditions. Unless modified in writing as set forth in Article II by the parties hereto, the duties of the Consultant and the CITY shall not be construed to exceed those services and duties specifically set forth in the agreement.

ARTICLE II: MODIFICATIONS

CITY or Consultant shall not make modifications in these Standard Terms and Conditions except in writing as an amendment to the agreement. Said modifications shall be agreed to by both parties, with scope of work, schedule, and compensation to be negotiated at the time the modification is proposed by either party. Modifications, which do not meet these requirements, shall not be binding, and no further compensation will be allowed for any work performed.

ARTICLE III: RESPONSIBILITIES OF THE CONSULTANT

- A. Notice to Proceed. The Consultant will not begin work on any of the duties and services listed in Attachment A until the CITY directs in writing to proceed. Authorization to proceed on additional services not defined in Attachment A shall be in the form of an amendment as defined in Article II.
- B. Level of Competence. The Consultant is employed to render professional services and shall be responsible, to the level of competence presently maintained by other practicing professional consulting firms in good standing and engaged in the same type of professional personal services, for the professional and technical adequacy and accuracy of designs, drawings, specifications, documents, and other work products furnished under this agreement.
- C. Cost Estimates. Construction and procurement cost estimates to be prepared under this agreement are to be based upon presently available data. In preparation of these cost estimates, the Consultant will apply its experience and judgment.
- D. Document Preparation. Consultant will prepare and furnish all deliverables, outlined in **Attachment A**, necessary for completion of the duties listed in Article I and the completion of the project.

- E. Access to Records. The Consultant agrees to preserve and maintain for at least three years after final payment under this contract, any directly pertinent books, documents, papers, and records generated by or provided to the Consultant in the course of the performance of its duties under the terms of this contract. The Consultant further agrees that the CITY, or any of its duly authorized representatives, shall, during said period, have access to and the right to audit, examine, and reproduce such records and further agrees to include the above provision in all subcontracts.

- F. Ownership of Documents. Upon completion of this agreement, all design and planning drawings and documents, including computer disks, shall become the joint property of the CITY and consultant. The consultant will furnish the CITY with the indicated number of copies of each document per this agreement and attachments. Both parties will exercise discretion in any re-use of said documents and both agree to hold each other harmless for any application of documents for any purpose other than the originally intended single use for the above named project.

- G. Local, State, or Federal Requirements. The Consultant covenants and agrees to comply with all of the obligations and conditions applicable to public contracts pursuant to ORS 279C, et seq, as though each obligation or condition were set forth fully herein. In addition, if the contract identified above includes a public improvement as that term is defined by ORS 279A .010(1)z(cc), the Consultant further agrees to comply with all obligations and conditions applicable to public contracts for public improvements pursuant to ORS 279, et seq, as though each obligation or condition were set forth fully herein. In addition the Consultant covenants and agrees that in the performance of its duties hereunder, it will comply with all other local Stayton Municipal Code, state, and federal requirements applicable to the City of Stayton for projects of the type in question.

The Consultant, its subconsultants, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

ARTICLE IV: RESPONSIBILITIES OF THE CITY

- A. Authorization to Proceed. The CITY shall authorize the Consultant in writing to proceed prior to the Consultant starting work on any of the services listed in Article I.

- B. Access to Records, Facilities and Property. The CITY shall comply with reasonable requests from the Consultant for inspection or access to the CITY's records, facilities, and properties.

- C. Timely Review. The CITY shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Consultant, obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as CITY deems appropriate for such examination and render in writing decisions pertaining thereto

in a timely manner so as not to unreasonably delay the services of the Consultant.

ARTICLE V: COMPENSATION

CITY agrees to pay for the services in Attachment B in accordance with the compensation provisions in this agreement.

Payment will be made within 30 days after the receipt of billing for each service rendered during the month. If payment is not made within 30 days, interest on the unpaid balance will accrue beginning on the 31st day at the rate of one percent (1%) per month or the maximum interest rate permitted by law, whichever is less. Such interest is due and payable when the overdue payment is made, unless delay in payment is due to a contested billing. CITY has the right to appeal or ask for clarification on any Consultant billing within 30 days of receipt of billing. Until said appeal is resolved or clarification is accepted, no interest will accrue on that portion of the billing. In the event of a contested billing, only that portion so contested shall be withheld, and the undisputed portion shall be paid in accordance with this Article V.

ARTICLE VI: INDEMNIFICATION

The Consultant agrees to indemnify, defend, and hold harmless the CITY, its designated agents, officers and employees, from and against any and all liability, claims, suits, loss, damages, costs, and expenses arising out of or resulting from the negligent or intentional acts, errors, or omissions of the Consultant, its officers, employees, or agents.

ARTICLE VII: INSURANCE

During the life of this agreement, the Consultant shall maintain the following minimum insurance:

- A. Comprehensive general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability. The combined single limit for bodily injury and property damage shall be not less than \$2,000,000.
- B. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired vehicles. \$1,000,000 minimum.
- C. Statutory workers' compensation and employer's liability insurance as required by state law.
- D. Professional liability insurance in the amount of \$2,000,000.

ARTICLE VIII: ASSIGNMENT

This agreement is to be binding upon the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. No assignment of this agreement shall be effective until the assignee assumes in writing the obligations of the assigning party and delivers such written assumption to the other original party to this agreement.

Use of subconsultants by the Consultant or subsidiary or affiliate firms of the Consultant for technical or professional services shall not be considered an assignment of a portion of this agreement, and the Consultant shall remain fully responsible for the work performed, whether such performance is by the Consultant or subconsultants. No subconsultants shall be used without the written approval of the City.

Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CITY and Consultant.

ARTICLE IX: INTEGRATION

These terms and conditions and the agreement to which they are attached represent the entire understanding of CITY and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The agreement may not be modified or altered except in writing as specified in Article II.

ARTICLE X: SUSPENSION OF WORK

The CITY may suspend, in writing, and without cause, all or a portion of the work under this agreement. The Consultant may request that the work be suspended by notifying the CITY, in writing, of circumstances that are interfering with the progress of work. The Consultant may suspend work on the project in the event the CITY does not pay invoices when due. The time for completion of the work shall be extended by the number of days work is suspended. In the event that the period of suspension exceeds 90 days, the terms of the agreement are subject to renegotiation and both parties are granted the option to terminate work on the suspended portion of the project, in accordance with Article XI.

ARTICLE XI: TERMINATION OF WORK

CITY may terminate all or a portion of the work covered by the agreement for its convenience. Either party may terminate work if the other party fails to substantially perform in accordance with the provisions of the agreement. Termination of the agreement is accomplished by 15 days' prior written notice from the party initiating termination to the other. Notice of termination shall be delivered by certified mail with receipt for delivery returned to the sender.

In the event of termination, Consultant shall perform such additional work as is necessary for the orderly filing of documents and closing of the project. The time spent on such additional

work shall not exceed 10 percent of the time expended on the terminated portion of the project prior to the effective date of termination. Consultant shall be compensated for work actually performed prior to the effective date of termination plus the work required for filing and closing as described in this Article. If no notice of termination is given, relationships and obligations created by this agreement shall be terminated upon completion of all applicable requirements of this agreement.

ARTICLE XIII: FORCE MAJEURE

Neither the CITY nor the Consultant shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

ARTICLE XIV: DISPUTE RESOLUTION

Any dispute or claim that arises out of or that relates to this AGREEMENT, or to the interpretation or breach thereof, shall first be submitted to mediation, and if not there resolved, the dispute shall be resolved by final and binding arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc. (ASP) by filing a claim, within one year of date the dispute arose, in accordance with the filing rules of ASP, and judgment upon the award rendered pursuant to such arbitration may be entered in Marion County, Oregon Circuit Court.

Any arbitration proceedings shall be conducted in Marion County, Oregon, and shall be concluded as to all facets of the arbitration proceeding within 120 days of the filing of the claim. Any Final or Supplemental Award that includes a provision for remediation shall specifically require that any such remediation be in accordance with all city, county, state and federal rules, regulations and statutes.

Any work required in any remediation requirement shall be done only after the issuance of all necessary permits for such work.

ARTICLE XV: DISPUTE COSTS

In the event either party brings action to enforce the terms of this agreement or to seek damages for its breach, or arising out of any dispute concerning the terms and conditions hereby created, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs, and expenses, incurred therein, including such costs and fees as may be required on appeal.

ARTICLE XVI: COURT OF JURISDICTION

The laws of the State of Oregon shall govern the validity of this agreement, its interpretation and performance, and other claims related to it. Venue for dispute shall be in Marion County, Oregon.

IN WITNESS WHEREOF, the parties have mutually entered into this Agreement on _____, 20XX.

CONSULTANT:

CITY OF STAYTON, OREGON:

By: _____

Consultant

By: _____

Julia Hajduk, City Manager