

CITY OF TUALATIN PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is entered into as of the date first indicated on the signature page by and between the City of Tualatin, a municipal corporation of the State of Oregon ("City"), and _____ ("Contractor").

Section 1. Contract Documents. The Contract Documents, which together form the complete Agreement between the parties, consists of the following documents in descending order of precedence: (i) this Agreement; (ii) any documents specifically referenced in this Agreement; and (iii) the attached Scope of Work (Exhibit A); (iv) the attached hourly rate schedule (Exhibit B); (v) the invitation to bid/propose; (vi) the Tualatin Public Works Design Standards; and (vii) Contractor's bid/response. To the extent there is any conflict between the Contract Documents, the conflict is resolved by the order of precedence above. There are no other Contract Documents other than those listed.

Section 2. Work.

- A. Completion.** Contractor must complete all Work that is generally described as set forth in Exhibit A, which is incorporated into this Agreement as if fully set forth.
- B. Authenticity by Contractor.** All written documents, drawings, and plans submitted by Contractor in completing the Work must be stamped with the engineer, land surveyor, architect, or design professional's professional stamp and bear that professional's signature or initials.
- C. Qualified Professionals.** All Work must be performed by qualified engineers and other professionals that are properly licensed under the laws of the State of Oregon.
- D. City Standards.** All design work must be according to City of Tualatin standards, including but not limited to, the Tualatin Municipal Code and Tualatin Public Works Standards, applicable Master plans, and all other applicable documents referenced in any of these documents.
- E. Solely Responsible.** Contractor is solely responsible for all Work under this Agreement, including all services, labor, materials and supplies, documents, permits and other requirements to complete the Work, whether produced by Contractor or any of Contractor's subcontractors or Contractors, except for those items identified as the responsibility of the City.
- F. Sufficient Plans.** Contractor warrants that the Agreement specifications and plans, if any, prepared by Contractor will be adequate and sufficient to accomplish the purposes of the project and that review or approval by the owner of the plans and specifications does not diminish the warranty of adequacy.
- G. Project Costs.** In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the project, given the uncertainty with such projections, City acknowledges Contractor makes no warranty that City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Contractor's opinions, analyses, projections, or estimates.
- H. Subsurface Investigations.** City acknowledges Contractor makes no warranty about subsurface conditions and cost/execution effects, even if analyzed, as soils, foundation, ground water, and other subsurface investigations may vary significantly between successive test points and sample intervals.
- I. Record Drawings.** Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. Contractor is not responsible for errors or omissions in the information from others that are incorporated into the record drawings.
- J. Additional Work.** If City requests. Contractors to provide additional services not included in the Work described on Exhibit A, the parties will enter into a written amendment to include such Work. The Agreement price for such additional Work will not exceed Contractor's hourly rate as agreed to in Exhibit B. No compensation for additional services will be paid or owing unless both parties specifically agree in writing to such additional compensation and services.

Section 3. Effective Date. The effective date of this Agreement is the date both Parties sign this Agreement ("Effective Date"). If the parties sign on separate dates, the date of the last signature is the Effective Date.

Section 4. Time is of the Essence. Contractor agrees that time is of the essence under this Agreement.

Section 5. Standard of Care. In the performance of its professional or technical services, Contractor must use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. Contractor will reperform any services not meeting this standard without additional compensation. Contractor's reperformance of any services, even if done at City's request, will not be considered as a limitation or waiver by City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care or this Agreement.

Section 6. Duty to Inform. If during the performance of this Agreement or in the future, Contractor becomes aware of actual or potential problems, faults, or defects in the projects, any nonconformance with the federal, state or local law, rule, or regulation, or has any objection to a decision or order made by City with respect to such laws, rules, or regulations, Contractor must give prompt written notice to City's Project Manager.

Section 7. Independent Contractor; Responsibility for Taxes and Withholding; Anti-Kickback.

- A. Independent Contractor.** Contractor will perform all Work as an independent Contractor. The City reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, the City may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- B. Not an Officer, Employee or Agent.** Contractor is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.
- C. Federal and State Taxes.** Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Agreement and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from City under this Agreement. Contractor is not entitled to, and expressly waives all claims to City benefits, including but not limited to health and disability insurance, paid leave, and retirement.
- D. Anti-Kickback.** Contractor must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 847) as supplemented in Department of Labor regulations (29 CFR part 3).

Section 8. Subcontracting. Except for those subcontracts identified in Exhibit A, Contractor's services are unique and as such, will not enter into any subcontracts for any of the Work required by this Agreement without City's prior written consent. Any subcontract will not relieve Contractor of any of its duties or obligations under this Agreement. All subcontracts for services must be issued under written agreements that include all provisions required under Oregon Public Contracting law. Upon request by the City, Contractor must provide City a copy of all agreements with subcontractors who are performing work under this Agreement.

Section 9. Agreement Price.

- A. Hourly Rate.** City agrees to pay Consultant on an hourly basis for actual hours worked on this project. The hourly rate is shown on Exhibit B, which is attached hereto and incorporated into this Agreement as if fully set forth.
- B. Maximum Fee.** In no event will City pay Contractor a price not to exceed _____, which is inclusive of all hours necessary to complete the Work.

Section 10. City Funds for Payment. (Check One Below)

- City certifies that it has sufficient funds currently authorized to finance the full costs of this Agreement.
- Contractor understand and agrees that City's payment of amounts under this Agreement is contingent on City receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow City, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

Section 11. Payment Process.

- A. Invoices.** Contractor must furnish City an invoice for services on a monthly basis. The invoice must contain an itemized statement showing the number of hours worked on the project by Contractor and the specific Work or portions of the Work performed.

- B. Reimbursable Expenses.** City's Payment for reimbursable expenses is limited to those reimbursable expenses set forth on Exhibit B, which are actually incurred by Contractor and itemized on Contractor's invoice for services.
- C. Payment for Services.** City will pay Contractor for services invoiced within thirty (30) days of receiving an itemized invoice ("net thirty"), unless City disputes the invoice, in which case City will only pay for those services not in dispute.

Section 12. Contractor's Representations.

- A.** In order to induce City to enter into this Agreement Contractor makes the following representations and warranties:
- (i) Contractor has the power and authority to enter into and perform his Agreement;
 - (ii) This Agreement, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;
 - (iii) Contractor has examined and carefully studied all Contract Documents and the other related data identified in the Contract Documents;
 - (iv) Contractor has become familiar with all conditions that may affect cost, progress, and performance of the Work;
 - (v) Contractor has the skill and knowledge possessed by well informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession;
 - (vi) Contractor must, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
 - (vii) Contractor prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- B. Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

Section 13. Suspension of Work. The City may suspend work by causing a written "stop work order" to be sent to Contractor as provided in the notice provisions of this Agreement and documenting the reasons for stopping the work. Contractor must stop all work upon receiving the "stop work order."

Section 14. Notice to Parties. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder must be given in writing by personal delivery, mail facsimile, or email.

- A. Notice by Personal Delivery.** Any communication or notice given by personal delivery is effective when actually delivered.
- B. Notice by Mail.** Notice given by mail must be by postage prepaid, to Contractor or City at the address, set forth herein, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed is effective five (five) days after mailing.
- C. Notice by Email.** Any communication or notice given by email is effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- D. Party to be Notified.** Unless otherwise notified in writing as set forth above, notices must be given to the Project Managers. If a Party's Project Manager is changed, notification of the change must be promptly made in writing to the other party. If a party receives a communication from the other party not executed by the Project Manager, the party may request clarification by the other party's Project Manager, which must be promptly furnished.

1. City's Project Manager

Name, Title, Address, Phone, Email

2. Contractor's Project Manager
Name, Title, Address, Phone, Email

Section 15. City's Obligations. In addition to obligations of City described in other parts of the Agreement Documents, City is responsible for providing the following:

- A. Timely Response.** City will respond in a timely manner to all properly submitted requests from Contractor.
- B. Cooperation.** City will cooperate with Contractor to promptly review, comment on and approve all proposals and work that comply with the requirements of this Agreement.

Section 16. Assignment of Agreement. No assignment of any rights, duties, responsibilities, or interests in the Agreement will be binding on the other party without the written consent of the party sought to be bound. No assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.

Section 17. Successors and Assigns. The provisions of this Agreement are binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

Section 18. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties must be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Section 19. Merger Clause; Waiver. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind the parties unless in writing and signed by both parties and all necessary City approvals have been obtained. Such waiver, consent, modification or change, if made, is effective only in the specific instance and for the specific purpose given.

Section 20. Agreement Construction. This Agreement shall not be construed against either party regardless of which party drafted it. Other than as modified by this Agreement, the applicable rules of Agreement construction and evidence will apply.

Section 21. Ownership of Intellectual Property.

- A. Original Works.** All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of City. City and Contractor agree that such original works of authorship are "work made for hire" of which City is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Contractor hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City's reasonable request, Contractor will execute such further documents and instruments necessary to fully vest such rights in City. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. In the event that Work Product created by Contractor under this Agreement is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to City an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf. In the event that Work Product created by Contractor under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the City's behalf and in the name of the City an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf. If the Work Product is the property of the Contractor-Architect, by execution of this Agreement, the Contractor-Architect grants to City an exclusive and irrevocable license to use the Work Product.
- B. Contractor Intellectual Property.** All pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other propriety rights of Contractor are and will remain the exclusive property of Contractor. Notwithstanding the foregoing, Contractor hereby grants to City an irrevocable, nonexclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on City's behalf.

C. Third Party Works. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the City's behalf and in the name of the City, an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on City's behalf.

Section 22. Records Maintenance; Access. Contractor must maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles, and any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance, for a minimum of three (3) years following final payment or termination of this Agreement. City may have access to all, documents, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts.

Section 23. No Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement. Contractor and the City are the only parties to this Agreement and are intended to be the only entities entitled to exercise and enforce the rights and obligations created by this Agreement.

Section 24. Nondiscrimination; Compliance with Applicable Law. Contractor agrees that no person shall, on the grounds of race, color, religion, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or veteran status suffer discrimination in the performance of this Agreement. Contractor must comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement. Contractor will not discriminate against minority-owned, women-owned, or emerging small businesses. Contractor must include a provision in each subcontract requiring subcontractors to comply with the requirement of this provision.

Section 25. Public Contracting Requirements. Contractor must comply with provisions of ORS 279A.110; 279B.220, 279B.225, 279B.230, and 279B.235, which are incorporated by reference herein. City's performance under the Agreement is conditioned upon Contractor's compliance.

Section 26. Certification of Compliance with Tax Laws. As required by ORS 279B.110(2)(e), Contractor represents and warrants that Contractor has complied with the tax laws of this state, the City, and applicable political subdivisions of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318, hereafter ("Tax Laws"). Contractor further covenants to continue to comply with the Tax Laws during the term of this Agreement and Contractor covenants and acknowledges that the failure to comply with the Tax Laws is a default for which City may terminate this Agreement and seek damages.

Section 27. Registered in Oregon and City of Tualatin. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor must promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement. Contractor must demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon prior to entering into this Agreement. Contractor must have or acquire a City business license prior to executing this Agreement.

Section 28. Use of Recycled Products. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

Section 29. Force Majeure. Neither City nor Contractor will be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of City or Contractor, respectively. Contractor must make all reasonable efforts to remove or eliminate such a cause of delay or default and must diligently pursue performance of its obligations under this Contract.

Section 30. Survival. All rights and obligations of the parties will cease upon termination or expiration of this Contract, except for the rights and obligations of a party for payment of completed Work, indemnity, dispute resolution, maintenance of insurance, and those provisions, including, but not limited to, provisions concerning property rights and governing laws which, by their nature, must survive termination to accomplish the intent of the parties as expressed in this Contract.

Section 31. Joint and Several Liability. In the event Contractor includes more than one person or entity, all such persons or entities will be jointly and severally liable for all conditions herein.

Section 32. Indemnification.

A. General Indemnity. Contractor must defend, save, hold harmless, and indemnify the City, its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Agreement.

Notwithstanding the foregoing, Contractor's indemnity and defense obligations arising out of professional errors and omissions is provided to the extent caused by Contractor's negligent acts, errors, or omissions.

- B. Control of Defense and Settlement.** Contractor will have control of the defense and settlement of any claim that is subject to this Section; however, neither Contractor nor any attorney engaged by Contractor will defend the claim in the name of the City, nor purport to act as legal representative of the City or any of its officers, employees, or agents without first receiving from the City, in a form and manner determined appropriate by the City, authority to act as legal counsel for the City, nor will Contractor settle any claim on behalf of the City without the approval of the City. The City may, at its election and expense, assume its own defense and settlement in the event that the City determines that the Contractor is prohibited from defending the City, or is not adequately defending the City's interests, or that an important governmental principle is at issue and the City desires to assume its own defense.

Section 33. Insurance. Contractor must provide City with evidence of the following insurance coverage's prior to execution of this Agreement. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon and certified as a true copy by an authorized representative of the issuing company or a certificate in a form satisfactory to City certifying to the issuance of such insurance, must be furnished to City. Unless specifically set forth on Exhibit A, insurance and related costs must be borne by Contractor. All policies must be written on an "occurrence basis," except for Contractor's Professional Liability Insurance which may be written on a "claims made" basis, and maintained in full force for not less than three (3) years following Contractor's performance under this Agreement. All policies must provide for not less than 30 days' written notice to City before they may be revised, non-renewed, canceled, or coverage reduced. Excepting professional liability and worker's compensation coverage, all policies must provide an endorsement naming the City, its officers, employees, and agents as additional insureds. If the policy lapses during performance, City may treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Contractor to proceed with work; pay an insurance carrier (either Contractor's or a substitute) the premium amount and withhold the amount from payment to Contractor; and use any other remedy provided by this Agreement or by law.

- A. Automobile.** Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- B. General Liability.** Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any act or omission of Contractor or of any of its employers, agents, or subcontractors, with \$2,000,000 per occurrence and in the aggregate.
- C. Professional Liability.** Professional Liability Insurance of \$2,000,000 per occurrence and in the aggregate, including contractual liability coverage. If Contractor proposes using subcontractors, City may require subcontractors to provide professional liability insurance, provided the amount and form of coverage complies with this Section.
- D. Policy Coverage.** Coverage provided by this policy(ies) must be primary and any other insurance carried by City is excess. Contractor will be responsible for any deductible amounts payable under all policies of insurance.
- E. Workers Compensation.** Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and must comply with ORS 656.017.

Section 34. Default; Remedies; Termination.

- A. Default by Contractor.** Contractor is in default under this Agreement if Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after City's notice, or such longer period as City may specify in such notice.
- B. City's Remedies for Contractor's Default.** In the event Contractor is in default, City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity; including, but not limited to:
- (i) Termination of this Agreement;
 - (ii) Withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;

- (iii) Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
- (iv) Exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default, then Contractor is entitled to the same remedies as if this Agreement was terminated.

C. Default by City. City is in default under this Agreement if:

- (i) City fails to pay Contractor any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
- (ii) City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

D. Contractor's Remedies for City's Default. In the event City terminates the Agreement, or in the event City is in default and whether or not Contractor elects to exercise its right to terminate the Agreement, Contractor's sole monetary remedy is (i) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Agreement but not yet billed, authorized expenses incurred and interest of two-thirds of one percent per month, but not more than eight percent per annum, and (ii) with respect to deliverable based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim(s) that City has against Contractor. In no event will City be liable to Contractor for any expenses related to termination of this Agreement or for any anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor must pay immediately any excess to City upon written demand provided.

E. Termination by City. At its sole discretion, City may terminate this Agreement:

- (i) For any reason upon thirty (30) days' prior written notice by City to Contractor;
- (ii) Immediately upon written notice if City fails to receive funding or expenditure authority at levels sufficient to pay for the Work or Work Products; or
- (iii) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the City's purchase of the Work or Work Products under this Agreement is prohibited or City is prohibited from paying for such Work or Work Products from the planned funding source.
- (iv) Immediately upon written notice by City to Contractor if Contractor is in default of this Agreement.

F. Termination by Contractor. Contractor may terminate this Agreement with such written notice to City upon the occurrence of the following events.

- (i) City is in default because City fails to pay Contractor any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Contractor's notice of the failure to pay or such longer period as Contractor may specify in such notice; or
- (ii) City is in default because City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and City fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

G. Return of Property upon Termination. Upon termination of this Agreement for any reason whatsoever, Contractor must immediately deliver to City all of City's property (including without limitation any Work or Work Products for which City has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such City property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Contractor must immediately cease all activities under this Agreement, unless City expressly directs otherwise in such notice of termination. Upon City's request, Contractor must surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

H. City's Remedies Cumulative. In the event of termination, in addition to the remedies provided herein, City shall have any remedy available to it in law or equity. City shall also have such remedies as are available to it in law or equity for Contractor's breach without the requirement that City first terminate this Agreement.

Section 35. Dispute Resolution.

- A. Process.** If Contractor is not in agreement with a decision of the City under this Agreement, Contractor must comply with the following process:
- (i) Contractor must file a written notice of appeal with the City's Project Manager within fifteen (15) days following receipt of the City's written decision.
 - (ii) The City's Project Manager will have sixty (60) days for review of the appeal prior to presenting a decision to Contractor. During the sixty (60) day period, the City's Project Manager will appoint a three-person management team as the authorized review panel. The review panel may call on the resources appropriate to evaluate the merit of the appeal. This may include; but not be limited to, City's attorney, Contractor, and any employee of City.
 - (iii) Prior to the end of the sixty (60) day review period, the City's Project Manager will issue a written decision to Contractor. If Contractor is agreeable with this decision, a Change Order will be processed consistent with the decision.
- B. Exhaustion of Remedies.** If Contractor is not in agreement with the written decision of Public Works Director, Contractor will only then be entitled to initiate legal action as the prescribed administrative remedies have been exhausted.
- C. Complaint.** Any claim that cannot be resolved between the parties as set forth in this Section shall be initiated by filing a complaint in the appropriate court as provided in this Agreement. The claim and all cross and counter-claims filed in response to the complaint shall be submitted to mediation. If the parties cannot agree on a mediator, the Presiding Judge for Washington County will select the mediator. Only if the dispute cannot be resolved by mediation, will the parties proceed to litigate the claim in court.

Section 36. Attorney Fees. If any suit, action, arbitration or other proceeding is instituted upon this Agreement or to enforce any rights herein or otherwise pursue, defend or litigate issues related to this Agreement, each party will be liable for their own attorneys' fee and costs, including those on appeal. The parties each agree and hereby waive any right to attorney fees granted by statute or rule that conflicts with this provision.

Section 37. Execution of Agreement; Electronic Signature. This Agreement may be executed in one or more counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original. A signature of a party provided by email, "pdf," or other electronic data file constitutes an original signature of that party.

Section 38. Governing Law; Venue; Consent to Jurisdiction. This Agreement is governed by and will be construed in accordance with the laws of the State of Oregon without regard to principles of law. Any claim, action, suit or proceeding (collectively, "Claim") between City and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Washington County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event will this Section be construed as a waiver of any form of defense or immunity from any Claim or from the jurisdiction of any court. Contractor, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Section 39. Authority to Bind. City and Contractor each represent and warrant that the individual(s) executing this Agreement have taken all steps necessary to secure full authority to bind the City and Contractor, respectively, for the acts, expenditures, and obligations contemplated in this Agreement to be performed by each of them. BY EXECUTION OF THIS AGREEMENT, EACH PARTY HEREBY ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

AGREED AND ENTERED this ____ day of _____, 20____.

(Contractor)

By _____

Title _____
Address _____

Telephone _____

Contractor's Federal ID Number

By _____
INSERT NAME OF CITY SIGNATORY
INSERT TITLE
18880 SW Martinazzi Ave.
Tualatin, Oregon 97062
Telephone _____

APPROVED AS TO LEGAL FORM

City Attorney