

**CITY OF GLADSTONE, OREGON
PERSONAL SERVICES CONTRACT**

A CONTRACT (“Contract”) between THE CITY OF GLADSTONE, OREGON (“City”), and (“Provider”) entered into on _____ (“Effective Date”).

WHEREAS, the City and Provider believe it in their mutual interest to enter into a written contract setting out their understandings concerning Provider’s provision of services to the City.

1. Term

The term of this Contract shall be effective from the date provided above and shall remain in full force and effect until _____, unless terminated earlier under this Contract.

2. Provider’s Service

The scope of Provider’s services and time of performance under this Contract are set forth in Exhibit A. All provisions and covenants contained in Exhibit A are hereby incorporated by reference and shall become a part of this Contract as is fully set forth herein. Any conflict between this Contract and Provider’s proposal (if any) shall be resolved first in favor of this written Contract. Provider will, in the rendering of its services to City, use his best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this Contract and Exhibit A.

3. Provider Identification

Provider shall furnish to City Provider’s employer identification number, as designated by the Internal Revenue Service or Provider’s Social Security number.

4. Compensation

Payment for the work provided by Provider shall be made as provided on Exhibit A attached hereto, provided that the total amount of payment to Provider shall not exceed \$X,000 inclusive of labor, materials, equipment supplies and expenses.

5. Project Managers

City’s Project Manager is the City Administrator. Provider’s Project Manager is XXXXX. Each party shall give the other written notification of any change in their respective Project Manager.

6. Project Information

No information, news or press releases related to the Provider’s services shall be made to representatives of newspapers, magazines, television and radio stations or any other

news medium without the prior authorization of City's Project Manager.

7. Duty to Inform

Provider shall give prompt written notice to City's Project Manager if, at any time during the performance of this Contract, Provider becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Provider shall constitute neither contract with nor acquiescence in Provider's statement or claim and shall not constitute a waiver of any of City's rights.

8. Extra or Changes in Work

Only the City Administrator or Project Manager may authorize extra (and/or change) work. Failure of Provider to secure authorization for extra work shall constitute a waiver of all right to adjustment in the Contract price or Contract time due to such unauthorized extra work and Provider thereafter shall be entitled to no compensation whatsoever for the performance of such work.

9. Provider is Independent Contractor

Provider is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Contract. Provider hereby expressly acknowledges and agrees that as an independent contractor, Provider is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgment by Provider shall not affect his independent ability (or the ability of his insurer) to assert the monetary limitations found at ORS 30.270, the immunities listed at ORS 30.265, or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS30.300).

10. Compliance with State and Federal Laws/Rules

Provider shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers' compensation insurance, health care payments, payments to employees and subcontractors, income tax withholding contained in ORS Chapters 279A and 279B, the provisions of which are hereby made a part of this Contract.

11. Indemnity and Insurance

- a) Indemnity: City has relied upon the professional ability and training of Provider as a material inducement to enter into this Contract. Provider warrants that all of his work will be performed consistent with commercially reasonable professional practices and standards, as well as with the requirements of applicable federal, state and local laws.

Indemnity: Provider releases and shall indemnify, defend, and hold harmless City, City's officers, employees, and agents from and against all claims, costs, damages, lawsuits, penalties, liens, losses, and/or liabilities of any kind or nature, including all expenses of investigating and defending against same, arising from the acts, errors, or omissions of Provider or Provider's agents, or employees associated with Provider's Services.

Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, City releases and shall indemnify, defend, and hold harmless Provider, Provider's officers, employees, and agents from an against all claims, costs, damages, lawsuits, penalties, liens, losses, and/or liabilities of any kind or nature, including expenses of investigating and defending against same, arising from the acts, errors, or omissions of City or City's agents, employees or contractors associated with Provider's Services.

- b) Liability Insurance: Provider shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Provider, City, its Councilors, officers, agents and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Provider's operations, in an amount not less than Two Million dollars (\$2,000,000.00) combined single limit per occurrence. Such insurance shall name City as an additional insured
- c) Certificates: Provider shall furnish City certificates evidencing the date, amount, and type of insurance required by this contract. All policies will provide for not less than thirty (30) days' written notice to City before they may be canceled.
- d) Primary Coverage: The coverage provided by insurance required under this Contract shall be primary, and any other insurance carried by City shall be excess.

12. Work is Property of City

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Provider under this Contract shall be the property of City.

13. Law of Oregon

The Contract shall be governed by the laws of the State of Oregon. Venue shall be in Clackamas County, Oregon.

14. Successors and Assignments

- a. Each party binds itself, and any partner, successor, executor, administrator, or assign to this Contract.
- b. Neither City nor Provider shall assign or transfer their interest or obligation hereunder in this Contract without the written consent of the others. Provider must seek and obtain City's written consent before subcontracting any part of the work required of Provider under this Contract. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

15. Records

- a. Provider shall retain all books, documents, papers, and records that are directly pertinent to this Contract for at least three years after City makes final payment on this Contract and all other pending matters are closed.
- b. Provider shall allow City, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

16. Breach of Contract

- a. Provider shall remedy any breach of this Contract within the shortest reasonable time after Provider first has actual notice of the breach or City notifies Provider of the breach, whichever is earlier. If Provider fails to remedy a breach in accordance with this paragraph, City may terminate that part of the Contract affected by the breach upon written notice to Provider, may obtain substitute services in a reasonable manner, and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this Contract.
- b. If the breach is material and Provider fails to remedy the breach in accordance with this paragraph, City may declare Provider in default and pursue any remedy available for a default.
- c. Pending a decision to terminate all or part of this Contract, City unilaterally may order Provider to suspend all or part of the services under this Contract. If City terminates all or part of the Contract pursuant to this paragraph, Provider shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Contract and later orders Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
- d. To recover amounts due under this paragraph, City may withhold from any

amounts owed by City to Provider, including but not limited to, amounts owed under this or any other Contract between Provider and City.

17. Mediation/ Trial Without a Jury

- a. Should any dispute arise between the parties to this Contract it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. Any litigation arising under or as a result of this Contract shall be tried to the court without a jury. Each party agrees to be responsible for payment of its own professional fees, including attorneys' fees.
- b. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

18. Termination for Convenience

The City may terminate all or part of this Contract at any time for its own convenience by written notice to Provider, effective immediately or at any time identified. Upon termination under this paragraph, Provider shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier, plus Provider's reasonable costs actually incurred in closing out the Contract.

19. Intellectual Property

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Contract shall vest in the City. Provider shall execute any assignment or other documents necessary to effect this paragraph. Provider may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Provider shall transfer to the City any data or other tangible property generated by Provider under this Contract and necessary for the beneficial use of intellectual property covered by this paragraph.

20. Conflict of Interest

Except with City's prior written consent, Provider shall not engage in any activity, or

accept any employment, interest or contribution that would, or would reasonably appear, to compromise Provider's professional judgment with respect to this Contract, including, without limitation, concurrent employment in direct competition with the Contract.

21. Modification

Any modification of the provisions of this Contract shall be reduced to writing and signed by the parties.

22. No Waiver of Legal Rights

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

23. Integration

This Contract contains the entire contract between the parties and supersedes all prior written or oral discussions or contracts regarding the same subject.

PROVIDER

CITY OF GLADSTONE, OREGON

Name, Title

Date: _____

Date: _____

ATTEST:
