



Personal Services Agreement Downtown Tualatin Urban Design Framework and Design Standards

THIS AGREEMENT is entered into by and between the CITY OF TUALATIN, a municipality organized under ORS 221.110 to 221.230 ("City"), and _____ ("Consultant"), collectively, "The Parties."

Section 1 - Agreement Documents. The Contract Documents, which together form the complete Contract between the parties, consist of the following documents in descending order of precedence:

- (i) This Agreement;
- (ii) The attached Statement of Work (Attachment 1);
- (iii) The City's Request for Proposals (Attachment 2); and
- (iv) Consultant's Proposal (Attachment 3).

To the extent there is any conflict between the documents, the conflict is resolved by the order of precedence described above. There are no Contract Documents other than those listed.

Section 2. Work. Consultant shall complete all Work that is generally described in the Statement of Work (Attachment 1). Consultant shall be solely responsible for all Work under this Agreement, including all applicable services, labor, materials and supplies, documents, and other requirements to complete the Work, whether produced by Consultant or any of Consultant's subconsultants, except for those items identified as the responsibility of the City.

Section 3. Effective Date; Term.

- A. 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 latter date shall be the Effective Date.
- B. Term.** The term of this agreement begins on the Effective Date and terminates on ____.

Section 4. Standard of Care. Consultant shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession.

Section 5. Independent Contractor; No Conflicts of Interest; Responsibility for Taxes and Withholding.

- A. Independent Contractor.** Consultant 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 Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Work.
- B. No Conflicts of Interest.** Consultant certifies that to the best of Consultant's knowledge and belief, no elected official or employee of the City, or person whose salary is payable in whole or part by the City, has a direct or indirect financial interest in this Agreement, or in the services to which it relates, or in any of the profits thereof, other than as disclosed by Consultant as applicable.
- C. Not an Officer, Employee or Agent.** Consultant is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.
- D. Federal and State Taxes.** Consultant is responsible for all federal or state taxes applicable to compensation or payments paid to Consultant under this Agreement and, unless Consultant is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Consultant's federal or state tax obligations. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from City under this Agreement. Consultant 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.

Section 6. Subcontracting. Consultant's services are unique and as such, it will not enter into any subcontracts for any of the Work required by this Agreement without City's prior written consent, except for those subcontracts expressly identified in Attachment 3.

Section 7. Agreement Price. City agrees to pay Consultant the not to exceed price of _____, which is inclusive of all hours necessary to complete the Work. Consultant understands 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 8. Payment Process.

- A. Invoices.** Consultant must furnish City an invoice for services on a monthly basis. The invoice must contain an itemized statement showing the specific Work or portions of the Work performed.
- B. Reimbursable Expenses and Travel.** City's Payment for reimbursable expenses is limited to those reimbursable expenses, if any, set forth on Attachment 3, which are actually incurred by Consultant and itemized on Consultant's invoice for services. Travel-related costs, including time spent traveling to and from the Consultant's regular place of business, residence, or other non-City location, are not reimbursable unless set forth on Attachment 3 or expressly authorized in advance by the City.
- C. Payment for Services.** City will pay Consultant 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 9. Notice to Parties. Notices required under this Agreement must be in writing and delivered by email or U.S. Mail to the Project Managers identified below, unless a party provides written notice of a different contact. Phone numbers may be provided for convenience only and do not constitute an authorized method for providing notice under this Agreement.

- A. Notice by Email.** Notices sent by email are effective upon transmission unless the sender receives notice that the email was not delivered.
- B. Notice by Mail.** Notices sent by U.S. Mail are effective five (5) calendar days after mailing, postage prepaid.

Each party must promptly notify the other party in writing of any change to its Project Manager or notice contact information.

- 1. **City's Project Manager**
Quinlan Brunner, Project Manager
10699 SW Herman Rd., Tualatin, OR 97062
(503) 691-3677, qbrunner@tualatin.gov
- 2. **Consultant's Project Manager**
Name, Title, Address, Phone, Email

Section 10. City's Obligations. In addition to obligations of City described in other parts of the Agreement Documents, City will respond in a timely manner to all properly submitted requests from Consultant and cooperate with Consultant to promptly review, comment on and approve all proposals and work that comply with the requirements of this Agreement.

Section 11. 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 12. 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 13. 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 14. Merger Clause; Waiver. This Agreement, including all Agreement Documents, 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.

Section 15. 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 16. Ownership of Intellectual Property.

- A. Original Works.** All Work Product created by Consultant 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 Consultant agree that such original works of authorship are "work made for hire" of which City is the author and Consultant 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, Consultant will execute such further documents and instruments necessary to fully vest such rights in City.
- B. Consultant Intellectual Property.** All pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights of Consultant are and will remain the exclusive property of Consultant. Notwithstanding the foregoing, Consultant 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 Consultant Intellectual Property, and to authorize others to do the same on City's behalf.
- C. Third Party Works.** In the event that Work Product incorporates Third Party Intellectual Property, Consultant must secure for City sufficient rights to use, reproduce, distribute, display, and modify such Third Party Intellectual Property as reasonably necessary for City's use of the Work Product.

Section 17. Records Maintenance; Access. Consultant 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 Consultant's performance, for a minimum period of three (3) years from the date of 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 18. No Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement. Consultant 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 19. Nondiscrimination; Compliance with Applicable Law. Consultant 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. Consultant must comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement. Consultant will not discriminate against minority-owned, women-owned, or emerging small businesses. Consultant must include a provision in each subcontract requiring subconsultants to comply with the requirement of this provision.

Section 20. Public Contracting Requirements. Consultant must comply with provisions of ORS 279A.110; ORS 279B.045, ORS 279B.220, ORS 279B.225, ORS 279B.230, and ORS 279B.235, which are incorporated by reference herein. City's performance under the Agreement is conditioned upon Consultant's compliance.

Section 21. Certification of Compliance with Tax Laws. As required by ORS 279B.110(2)(e), Consultant represents and warrants that Consultant 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"). Consultant further covenants to continue to comply with the Tax Laws during the term of this Agreement and Consultant 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 22. Registered in Oregon. If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant 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. Consultant must demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon prior to entering into this Agreement.

Section 23. Force Majeure. Neither City nor Consultant 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 Consultant, respectively.

Section 24. 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 25. Joint and Several Liability. In the event Consultant includes more than one person or entity, all such persons or entities will be jointly and severally liable for all conditions herein.

Section 26. Indemnification. Consultant 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 Consultant or its officers, employees, subconsultants, or agents under this Agreement.

Section 27. Insurance. Consultant must provide City with evidence of the following insurance coverage 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. Insurance and related costs must be borne by Consultant. All policies must be written on an "occurrence basis," except for Consultant'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 Consultant's performance under this Agreement.

Professional Liability Insurance maintained on a claims-made basis must maintain the same retroactive date applicable to the policy in effect at the time services under this Agreement commenced, or provide substantially equivalent coverage. If such claims-made coverage is canceled, not renewed, or otherwise discontinued during the required three-year period, Consultant must obtain and maintain an extended reporting period ("tail") coverage for the remainder of the required period.

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 Consultant to proceed with work; pay an insurance carrier (either Consultant's or a substitute) the premium amount and withhold the amount from payment to Consultant; 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 \$500,000 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 Consultant or of any of its employers, agents, or subcontractors, with \$1,00,000 per occurrence and \$1,00,000 in the aggregate.

- C. **Professional Liability.** Professional Liability Insurance of \$2,000,000 per claim and \$2,000,000 in the aggregate. If Consultant proposes using subconsultants, City may require subconsultants 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. Consultant will be responsible for any deductible amounts payable under all policies of insurance.
- E. **Workers Compensation.** Consultant, its subconsultants, 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 28. Default; Remedies; Termination.

- A. **Default by Consultant.** Consultant is in default under this Agreement if Consultant 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 Consultant'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. If the City, in its reasonable discretion, determines that the default is of a nature that cannot be cured (including but not limited to instances of irreparable harm to City, fraud, criminal conduct, or violation of local, state or federal law), the City may immediately terminate the Agreement pursuant to Section 28(E)(iv). City shall specify the basis on which the agreement is being terminated, including a description of the breach.
- B. **City's Remedies for Consultant's Default.** In the event Consultant 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 Consultant 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 Consultant was not in default, then Consultant 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 Consultant any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Consultant's notice or such longer period as Consultant 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 Consultant's notice or such longer period as Consultant may specify in such notice.
- D. **Consultant'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 Consultant elects to exercise its right to terminate the Agreement, Consultant'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 Consultant. In no event will City be liable to Consultant for any expenses related to termination of this

Agreement or for any anticipated profits. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant 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 Consultant;
- (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) City may terminate this Agreement immediately upon written notice by City to Consultant if Consultant is in default of this Agreement.

F. Termination by Consultant. Consultant 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 Consultant any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Consultant's notice of the failure to pay or such longer period as Consultant 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 Consultant's notice or such longer period as Consultant may specify in such notice.

G. Return of Property upon Termination. Upon termination of this Agreement for any reason whatsoever, Consultant 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 Consultant 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, Consultant must immediately cease all activities under this Agreement, unless City expressly directs otherwise in such notice of termination. Upon City's request, Consultant 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 Consultant's breach without the requirement that City first terminate this Agreement.

Section 29. Dispute Resolution.

- A. Process.** If Consultant disagrees with a decision of the City under this Agreement, Consultant must provide written notice to the City's Project Manager of Consultant's disagreement, and include all relevant information and attachments, within thirty (30) days of Consultant's knowledge of the decision to which Consultant disagrees. The City's Project manager will review the information and meet with Consultant to attempt to come to resolution on the dispute and process any necessary Change Order. If City and Consultant are unable to come to resolution, the City's Project Manager will issue a written decision outlining the City's reasons to decline Consultant's request regarding the dispute.
- B. Complaint.** Any claim that cannot be resolved between the parties as set forth 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 30. 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 31. Confidentiality and Protection of Personal Information. Consultant acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of information that is exempt from disclosure to the public under Oregon's Public Records Laws, the Oregon Consumer Identity Theft Protection Act, ORS 646A.600- 646A.628, or other state or Federal statutes. Consultant agrees to hold such information in strictest confidence and not to make use of such information for any purpose other than the performance of this Agreement, to release it only to authorized employees or subconsultants requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without City's express written consent or as provided by law.

Section 32. 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 33. 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 Consultant 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. Consultant, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Section 34. Authority to Bind. City and Consultant 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 Consultant, respectively, for the acts, expenditures, and obligations contemplated in this Agreement to be performed by each of them.

CONSULTANT, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT CONSULTANT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

APPROVED AND ENTERED ON _____.

By:

City of Tualatin
By:

Date

Date