

## ATTACHMENT H

### ALBANY PROFESSIONAL SERVICES AGREEMENT STANDARD TERMS AND CONDITIONS FOR AGREEMENT TO PROVIDE DESIGN SERVICES TO THE CITY OF ALBANY, OREGON

#### **ARTICLE I: SCOPE**

For consideration set forth in Article V, the firm of \_\_\_\_\_, a professional consulting architectural firm, hereinafter referred to as CONSULTANT, agrees to provide architectural services to the City of Albany, Oregon, a municipal corporation, hereinafter referred to as CITY, for the improvements described in the agreement that incorporates these Standard Terms and Conditions and as shown in ATTACHMENT A. Unless modified in writing as set forth in Article II by the parties hereto, the duties of CONSULTANT and 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 the attached agreement or 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. CONSULTANT will not begin work on any of the duties and services listed in Article I until execution of the contract. Authorization to proceed on additional services not defined in Article I shall be in the form of an amendment as defined in Article II.
- B. Level of Competence. CONSULTANT is employed to render professional services and shall be responsible, to the level of competence presently maintained by other practicing professional architectural 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, CONSULTANT will apply its experience and judgment.
- D. Document Preparation. CONSULTANT will prepare and furnish all contract documents necessary for completion of the duties listed in Article I and the construction of the project.
- E. Access to Records. 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 CONSULTANT in the course of the performance of his duties under the terms of this contract. CONSULTANT further agrees that 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, contract, bid, and record drawings and documents, including computer disks, shall become the property of CITY. CITY will exercise discretion in any re-use of said documents and agrees to hold harmless CONSULTANT for any application of documents for any purpose other than the originally intended use.

- G. State or Federal Requirements. CONSULTANT covenants and agrees to comply with all of the obligations and conditions applicable to public contracts pursuant to ORS 279 Chapters A, B, and C, as though each obligation or condition were set forth fully herein. In addition, if the contract identified above calls for a public improvement as that term is defined by ORS 279A.010, CONSULTANT further agrees to comply with all obligations and conditions applicable to public contracts for public improvements pursuant to ORS 279C, et seq, as though each obligation or condition were set forth fully herein. In addition CONSULTANT covenants and agrees that in the performance of its duties hereunder, it will comply with all other state and federal requirements applicable to the City of Albany for projects of this type in question.
- H. Oregon Workers' Compensation Law. 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.
- I. Oregon Identity Theft Protection Act. CONSULTANT, and its subconsultants, if any, agree to comply with the Oregon Identity Theft Protection Act (OITPA), ORS Sections 646A.600 through 646A.628.
- J. Taxpayer Identification Number. CONSULTANT agrees to complete a Request for Taxpayer Identification Number and Certification (W-9 Form) as a condition of the CITY'S obligation to make payment. If the CONSULTANT fails to complete and return the W-9 Form to the CITY, payment to CONSULTANT may be delayed, or the CITY may, in its discretion, terminate the Contract.

#### **ARTICLE IV: RESPONSIBILITIES OF THE CITY**

- A. Authorization to Proceed. CITY shall authorize CONSULTANT upon execution of the contract to start work on any of the services listed in Article I.
- B. Access to Records, Facilities and Property. CITY shall comply with reasonable requests from CONSULTANT for inspection or access to CITY's records, facilities, and properties.
- C. Timely Review. 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 CONSULTANT.

#### **ARTICLE V: COMPENSATION**

CITY agrees to pay for the services in Article I in accordance with the compensation provisions in this Agreement and as further defined in Attachment A.

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.

Notwithstanding anything in this agreement to the contrary, the CITY'S obligation to pay money beyond the current fiscal year shall be subject to and dependent upon appropriations being made from time to time by the City Council for such purpose; provided, however, that the City Manager or other officer charged with the responsibility for preparing the CITY'S annual budget shall include in the budget for each fiscal year the amount of the CITY financial obligation payable in such year and the City Manager or such other officer shall use his/her best efforts to obtain the annual appropriations required to authorize said payments.

## **ARTICLE VI: INDEMNIFICATION**

CONSULTANT agrees to indemnify, defend, and hold harmless CITY, its 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 CONSULTANT, its officers, employees, or agents.

## **ARTICLE VII: INSURANCE**

CONSULTANT shall not commence any work until they obtain, at their own expense, all required insurance as specified below. Such insurance must have the approval of City of Albany as to limits, form, and amount. The types of insurance CONSULTANT is required to obtain or maintain for the full period of the contract will be:

- A. Commercial General Liability insurance including personal injury, bodily injury and property damage with limits as specified below. Limits may be provided by Excess or Umbrella policy:

*Limits:* \$2,000,000 Per Occurrence/\$3,000,000 General Aggregate /\$3,000,000 Products and Completed Operations Aggregate. Aggregates shall apply per Project.

*Form:* All policies must be of the occurrence form with combined single limit for bodily injury and property damage. Any deviation from this requirement must be reviewed and approved by the City Risk Manager. All claims-made forms must have tail coverage and the prior approval of City Risk Manager. Submit a complete copy of claims-made policies and endorsements with the certificate of insurance.

- B. Business Automobile Liability insurance with limits of \$2,000,000 per accident. The coverage shall include owned, hired, and non-owned automobiles.

- C. Professional Liability insurance with limits not less than \$2,000,000 per claim and \$2,000,000 annual aggregate with 24 months tail coverage

- D. Workers' Compensation and Employer's Liability as statutorily required for persons performing work under this contract. Any subcontractor hired by CONSULTANT shall also carry Workers' Compensation and Employer's Liability coverage.

*Employer's Liability Limits:* \$500,000 each accident / \$500,000 policy limit / \$500,000 each employee

- E. Additional Insured Clause – The Commercial General Liability insurance coverages required for performance of this contract shall be endorsed to name CITY OF ALBANY and its officers, agents and employees as Additional Insureds on any insurance policies required herein with respect to Contractor's activities being performed under the Contract. The Certificate of Insurance must include a copy of the Additional Insured endorsement and the policy must be endorsed to show cancellation notices to the CITY OF ALBANY – FINANCE DEPARTMENT – RISK MANAGER. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

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

CITY may suspend, in writing, and without cause, all or a portion of the work under this agreement. CONSULTANT may request that the work be suspended by notifying CITY, in writing, of circumstances that are interfering with the progress of work. CONSULTANT may suspend work on the project in the event 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 XII: FORCE MAJEURE**

Neither CITY nor 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 XIII: 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 XIV: CONFLICT AND SEVERABILITY**

In the event of any inconsistency between the terms of this Agreement and the terms listed in any additional attachments to this Agreement, the terms of this Agreement shall control. Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

#### **ARTICLE XV: NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY**

During the term of this Agreement, the CONSULTANT agrees as follows: The CONSULTANT will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

#### **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 litigation shall be in Linn County, Oregon.

**CONSULTANT:**

**CITY OF ALBANY, OREGON:**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Telephone: \_\_\_\_\_

City Attorney

Fax: \_\_\_\_\_

Corporation Tax No. (if incorporated)

Social Security No. (if individual)