

# CITY OF COTTAGE GROVE CITY ENGINEERING SERVICES CONTRACT

This Contract is by and between the City of Cottage Grove (“City”) and \_\_\_\_\_ (“Engineer”) for the performance of general city engineering services for City, on an as needed basis.

## **A. RECITALS**

City has conducted a formal solicitation for proposals from engineering firms pursuant to City Public Contracting Rules Division 48.

Engineer submitted its proposal, having examined the Request for Proposals (RFP), and was chosen as the most highly qualified engineer, best suited to meet City’s needs pursuant to the RFP criteria.

City has awarded this contract to Engineer.

## **B. CONTRACT EXHIBITS**

The following exhibits are hereby incorporated by reference into this Contract:

- Exhibit A – Scope of Work
- Exhibit B – Task Order Form
- Exhibit C – Oregon Personal Services Public Contracting Code Requirements
- Exhibit D – Request for Proposal
- Exhibit E – Engineer’s Proposal and Schedule of Rates and Charges

In the event of a conflict between this Contract and its exhibits, the terms of this Contract shall prevail, followed by Exhibit B, A, D, C, then Exhibit E, in that order.

## **C. AGREEMENT**

### **1. Term and Authorization to Proceed**

- 1.1 The term of this Contract shall be from its execution to \_\_\_\_\_, 20\_\_\_\_, for an initial three (3) year term. Thereafter, it may be extended for up to two (2) additional one (1) year terms upon written consent of both parties. Such extension(s) will consider adjustment to Engineer’s schedule of charges attached within Exhibit E to this Contract.
- 1.2 Execution of this Contract by City will be authorization for Engineer to proceed with the work under the provisions of this Contract, as directed by City.

### **2. Scope of Work**

- 2.1 Engineer shall provide all services and deliver all materials as specified in the attached Exhibits A through E, which are hereby incorporated into this Contract by this reference, and as may be described by future addenda to this Contract.
- 2.2 Engineer will, in the rendering of its services to City, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered.
- 2.3 Task Orders. Task orders in the form attached as Exhibit B shall be used as the sole basis to authorize all Work related to this Agreement. Subject to ORS 279C.110, a task order shall be issued by City and assigned to Engineer based upon Engineer’s availability to complete the Work on City’s timeline, Engineer’s specialized expertise and price. Task orders are subject to all terms of this Contract and shall establish the assigned Scope of

Work, delivery schedule, and total compensation that reflects an identified payment methodology, rates, hours, and includes any reimbursables. Task orders that do not meet these requirements shall not bind the parties and no further compensation will be paid for any Work performed.

City shall have the right to request Work outside the scope of any task order to this Contract and to cancel a portion of the Work at any time. A task order amendment shall set compensation for all additional Work requested and a reduction thereto, in the event City cancels Work. City shall not be liable for profits lost due to cancelled Work. Engineer shall perform no Work outside the scope of any task order to this Contract until the parties have signed a modification to the task order that describes the Work and contains the terms of payment. Engineer shall not be entitled to payment for Work outside the scope of a task order, unless the parties signed a modification to the task order before Engineer performed that Work. Engineer shall not make modifications to the task orders or standard terms and conditions of this Contract except in writing.

### **3. Compensation**

3.1 Compensation. For the services described and performed by Engineer, the City agrees to pay, and the Engineer agrees to accept, compensation in accordance with the Schedule of Rates and Charges, attached within Exhibit E.

3.2 Invoices.

- a. Invoices for services of Engineer shall be billed to the City in summary form, itemized by projects and/or Task Orders, on or about the end of the first full business week of each month, for all services performed through the last day of the previous month.
- b. Engineer will provide in its invoices a detailed description of hours billed to assist City in correctly allocating costs to separate projects, or may modify the billing statement into a format that is agreeable to both parties. Reimbursable expenses shall be itemized and backup invoices provided if required by City.

3.3 Payments.

- a. City will review Engineer's invoice and within ten (10) days of receipt notify Engineer in writing if there is a disagreement or dispute with the invoice. If there are no such disputes with the invoice, City shall pay the invoice amount in full within thirty (30) days of invoice date.
- b. If City fails to make any payment due Engineer for services and expenses within thirty (30) days of the date on Engineer's invoice therefore, late fees will be added to amounts due Engineer at the rate of 1.0 percent (1%) per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute. In addition, Engineer may, after giving seven (7) days written notice to City, suspend services under this Contract until Engineer has been paid in full all amounts due for services, expenses, and charges, except any invoices in dispute.

### **4. Engineer Is an Independent Contractor**

4.1 Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under this Contract. While City reserves the right to set various schedules and evaluate the quality of Engineer's completed work, City cannot and will not control the means and manner of Engineer's performance. Engineer is responsible for determining the appropriate means and manner of performing work.

4.2 Engineer is responsible for all federal and state taxes applicable to compensation and payment paid to Engineer under this Contract and will not have any amounts withheld by City to cover Engineer's tax obligations.

4.3 Engineer is not eligible for any City fringe benefit plans.

**5. Notices**

All notices provided for hereunder shall be in writing and shall be deemed to be duly served on the date of delivery if delivered in person, when receipt of transmission is generated by the transmitting facsimile machine if delivered by facsimile transmission, on the day after deposit if delivered by overnight courier, or three days after deposit if delivered by placing in the U.S. mail, first-class, postage prepaid. Any notice delivered by facsimile transmission shall be followed by a hard copy. All notices shall be addressed as follows:

City: City of Cottage Grove  
400 E. Main Street  
Cottage Grove, Oregon 97424  
Phone: (541) 942-5501  
Fax: (541) 942-1267

Engineer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

**6. Indemnification**

6.1 Liability of Engineer for Claims Other Than Professional Liability:  
For claims other than professional liability, Engineer shall indemnify, hold harmless, and defend City and its officers, agents, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits, to the extent resulting from or arising out of Engineer's negligent activities, performance and/or fault of Engineer, its employees, representatives, or subconsultants in connection with this Contract or the work to be performed hereunder. Nothing herewith shall be construed to require indemnification of City attributable to its own negligence, or for acts outside the control of Engineer or the control of anyone acting on Engineer's behalf in connection with, or incidental to, this Contract.

6.2 Liability of Engineer for Claims for Professional Liability:  
For claims for professional liability, Engineer shall defend, save, and hold harmless City, its officers, agents and employees, from all claims, suits, or actions to the extent arising out of the professional negligent acts, errors or omissions of Engineer, its subconsultants, agents or employees in the performance of professional services in connection with this Contract or the work to be performed hereunder.

6.3 Liability of City:  
City shall hold Engineer, its officers, agents and employees harmless from and indemnify them for any and all liability, settlements, loss, costs and expenses in connection with any actions suit, or claim caused by City's negligent acts, omissions, activities or services by City, its agents or employees.

6.4 Liability Shared by Engineer and City:  
If negligence, errors or omissions of both Engineer and City (or person identified above for whom each is liable) is a cause of such claims, suits, or actions, the loss, cost, or expense shall be shared between Engineer and City in proportion to their relative

degrees of negligence, errors, or omissions and the right of indemnity shall apply for such proportion.

## 7. Insurance Requirements

- 7.1 During the term of this Contract, Engineer shall maintain, at its own expense, the following types of insurance in the following amounts:
- a. Occurrence form commercial general liability insurance, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards):
    - \$2,000,000 – each occurrence (bodily injury)
    - \$4,000,000 – general aggregate
    - \$1,000,000 – property damage, contractual, etc.
    - \$2,000,000 – umbrella liability coverage

Coverage shall also include contractual liability coverage for the indemnity provided under this contract.
  - b. Automobile Liability insurance limit shall not be less than \$1,000,000 combined single limit per accident.
  - c. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence.
  - d. Professional Errors and Omissions insurance covering Engineer's liability arising out of negligent acts, errors or omissions in its performance of work or services under this Contract. Such policy will have a combined single limit of not less than \$2,000,000 per each claim, incident or occurrence. Such policy will be on a claims made basis and will have an extended claims reporting period of five (5) years after final completion.
  - e. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.
- 7.2 Except as required in 7.1(d) above, if any of the above required insurance is arranged on a "claims made" basis, "tail" coverage will be required at final completion or termination of this Contract for a duration of two (2) years.
- 7.3 Policies shall provide that City, its council, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 7.1(a) and Section 7.1(b) and a waiver of subrogation against them shall be obtained for all coverages.
- 7.4 All coverages under Section 7.1 shall be primary over any insurance City may carry on its own. City shall procure and maintain general liability insurance during the full term of this contract which provides insurance coverage up to the limits of the Oregon Tort Claims Act, in connection with any actions suit, or claim from any third party caused by City's negligent acts, omissions, activities or services by City or its officers, employees or agents.
- 7.5 City shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under this Contract.

- 7.6 All policies of insurance shall be issued by good, responsible companies, with a rating reasonably acceptable to City and that are qualified to do business in the state of Oregon.
- 7.7 Engineer shall furnish City with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. If requested by City, Engineer shall furnish City with executed copies of such policies of insurance. Engineer shall furnish City with at least 30 days' written notice of cancellation of, or any modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

## **8. Workers' Compensation**

- 8.1 Engineer, its subconsultants, if any, and all employers working under this Contract 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 subject workers.
- 8.2 Engineer warrants that all persons engaged in Contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Engineer shall indemnify City for any liability incurred by City as a result of Engineer's breach of the warranty under this paragraph.

## **9. Hours of Employment**

Engineer shall comply with all applicable state and federal laws regarding employment.

## **10. Assignment**

Neither City nor Engineer may assign any of its responsibilities under this Contract without prior written consent from the other party, which consent shall not be unreasonably withheld. Engineer may not subcontract for performance of any of its responsibilities under this Contract without City's prior written consent (which consent shall not be unreasonably withheld), other than work performed directly for Engineer by the subconsultants specified in Exhibit E.

Engineer's assigning or subcontracting of any of its responsibilities under the Contract without City's consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, Engineer shall remain liable for all of its obligations under this Contract.

## **11. Labor and Material**

Engineer shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Contract work, all at no cost to City other than the compensation provided in this Contract.

## **12. Ownership of Work and Documents**

- 12.1 **Ownership of Work, Unauthorized Use of Work.** All work performed by Engineer and compensated by City pursuant to this Contract shall be the property of City upon full compensation for that work performed or document produced to Engineer, and it is agreed by the parties that such documents are works made for hire. Engineer hereby conveys, transfers and grants to City all rights of reproduction and the copyright to all such documents. However, in the event City reuses or modifies any engineering documents furnished to City by Engineer, without Engineer's involvement or consent, then Engineer shall not be responsible for the materials.

- 12.2 Intellectual Property.
- a. 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 City, except for work exempted by Paragraph 12.2.b below. Upon request, Engineer shall execute any assignment or other documents necessary to give effect to this paragraph. Engineer will retain a nonexclusive right to use intellectual property vested in City as part of this Contract.
  - b. Engineer shall retain all intellectual property rights (including but not limited to copyrights and/or patents of any type) for work completed by Engineer prior to execution of this Contract, or completed for other clients or outside of the scope of this Contract. This includes but is not limited to design elements developed on previous projects, as well as standard contract documents, standard specifications, design standards manuals, standard details or other standard documents, details or drawings developed prior to execution of or outside the scope of this Contract.
  - c. City will retain a nonexclusive right to utilize documents and materials provided to City by Engineer which are excluded under paragraph 12.2.b, but shall not profit from such use, and shall not provide these documents or materials for use by other jurisdictions without authorization from Engineer.

### **13. Termination for Convenience**

- 13.1 This Contract may be terminated by mutual consent of the parties upon written notice.
- 13.2 City may terminate all or part of this Contract upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Engineer.
- 13.3 Upon termination under this paragraph, Engineer shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Engineer. Only upon prior written notice from City, City will agree to pay Engineer's reasonable costs actually incurred in the orderly closing out of specific work tasks or projects underway under this Contract. Pursuant to this paragraph, Engineer shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Engineer. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Engineer can show good cause beyond its control for the delay.
- 13.4 City may unilaterally order Engineer to suspend all or part of the services under this Contract. If City suspends certain services under this Contract and later orders Engineer to resume those services, Engineer will be entitled to reimbursements for the costs actually and reasonably incurred, if any, in re-starting the suspended services.
- 13.5 Engineer may terminate this Contract for its own convenience upon 120 days prior written notice to City.

### **14. Termination for Cause**

- 14.1 City may terminate this Contract, or specific work items authorized under this Contract, effective upon delivery of written notice to Engineer, or at such later date as may be established by City, under any of the following conditions:
- a. If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.

- b. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
  - c. If any license or certificate required by law or regulation to be held by Engineer to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
- 14.2 Engineer may terminate all or part of this contract for cause if City breaches the provisions of this contract or requests Engineer to perform work in violation of applicable laws, ordinances, or generally accepted engineering practices and standards in effect when the services are rendered, upon 14 days written notice to City.
- 14.3 Upon termination under Section 14.1, Engineer shall be entitled to payment in accordance with the terms under paragraph 13.3.

## **15. Termination for Default**

- 15.1 Either City or Engineer may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
- 15.2 If Engineer fails to perform in the manner called for in this Contract or if Engineer fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Engineer setting forth the manner in which Engineer is in default. Engineer shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract.

## **16. Remedies**

In the event of breach of this Contract the parties shall have the following remedies:

- 16.1 If terminated under paragraph 15 by City due to a breach by Engineer, City may complete the work either itself, by agreement with another party, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Engineer shall pay to City the amount of the reasonable excess.
- 16.2 In addition to the above remedies for a breach by Engineer, City also shall be entitled to any other equitable and legal remedies that are available.
- 16.3 If City breaches this Contract, Engineer's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Engineer is entitled.
- 16.4 City shall not be liable for any indirect, incidental, consequential, or special damages under this Contract or any damages arising solely from terminating this Contract in accordance with its terms.
- 16.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Engineer shall immediately cease all activities related to the services and work under this Contract. As directed by City, Engineer shall, upon termination, deliver to City all then existing work product that, if the Contract had been completed, would be required to be delivered to City.

**17. Nondiscrimination**

During the term of this Contract, Engineer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

**18. Governing Law; Jurisdiction; Venue**

This Contract shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between City and Engineer that arises from or relates to this Contract which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Lane 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. ENGINEER BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of City's protections under the Oregon Tort Claims Act.

**19. Compliance with Laws and Regulations**

Engineer shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Engineer expressly agrees to comply with: (i) ORS 659A.142; and (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) City's performance under this Contract is conditioned upon Engineer's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit C and incorporated herein by this reference. Engineer, its subconsultants and all employers providing work, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Engineer shall adhere to all safety standards and regulations established by City for work performed on its premises or under its auspices.

**20. Experience, Capabilities and Resources; Standard or Care**

20.1 By execution of this Contract, the Engineer agrees that:

- a. Engineer is an experienced engineering firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract to design or administer any work within the scope and complexity contemplated by this Contract.
- b. Engineer has the capabilities and resources necessary to perform the obligations of this Contract.
- c. Engineer is familiar with all current laws, rules, and regulations which are applicable to the design and construction of work which may fall within the scope of this Contract, and that all drawings, specifications, and other documents prepared by Engineer shall be prepared in accordance with the standard of care of other professionals performing similar services under similar conditions and in an effort to accurately reflect and incorporate all such laws, rules, and regulations.

20.2. The standard of care applicable to Engineer's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time said services are performed.

- 20.3. While exercising the standard of care applicable to Engineer's services, if Engineer's performance of services hereunder reasonably requires Engineer to rely on information provided by other parties (excepting Engineer's subconsultants), Engineer shall not be required to independently verify the validity, completeness or accuracy of such information unless otherwise expressly engaged to do so in writing by City.

**21. Drawings, Specifications and Other Documents; Opinions of Cost**

- 21.1 Engineer hereby agrees that it will, in a manner consistent with its standard of care defined above in Section 20, prepare all drawings, specifications, and other documents pursuant to this Contract so that they are complete and that any project, if constructed in accordance with the intent established by such drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility.
- 21.2 In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for work under this Contract, Engineer has no control over unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; quality of performance by operating personnel or third parties; and other operational factors that may materially affect the ultimate project cost or schedule.

**22. Errors and Omissions**

Engineer shall be responsible for correcting any errors or omissions in the drawings, specifications, and/or other documents which deviate from the standard of care set forth in Section 20. Engineer shall correct at no additional cost to City any and all such errors and omissions in the drawings, specifications, and other documents prepared by Engineer or its subconsultants. Engineer further agrees to assist City in resolving problems relating to any project designs or specified materials.

**23. Contract Performance**

Engineer and City shall at all times carry on the services and obligations diligently, without delay and punctually fulfill all requirements herein. Engineer shall not be liable for delays that are beyond Engineer's control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any breach of Engineer's warranties or a default or defect in performance by Engineer or City that has not been cured. The parties agree that time is of the essence under this Contract.

**24. Access to Records**

- 24.1 For not less than three (3) years after the Contract expiration and for the purpose of making audit, examination, excerpts, and transcripts, City, and its duly authorized representatives shall have access to Engineer's books, documents, papers, and records that are pertinent to this Contract, at City's cost for retrieval and reproduction.
- 24.2 If, for any reason, any part of this Contract, or any resulting construction contract(s) is involved in litigation, Engineer shall retain all pertinent records for not less than three (3) years or until all litigation is resolved, whichever is longer. Engineer shall provide full access to these records to City and its duly authorized representatives in preparation for and during litigation, at City's cost for retrieval and reproduction.

**25. Representations and Warranties**

- 25.1 Engineer represents and warrants to City that:
- 25.1.1 Engineer has the power and authority to enter into and perform this Contract;

- 25.1.2 When executed and delivered, this Contract shall be a valid and binding obligation of Engineer enforceable in accordance with its terms;
  - 25.1.3 Engineer shall, at all times during the term of this Contract, be duly licensed to perform the services, and if there is no licensing requirement for the profession or services, be duly qualified and competent;
  - 25.1.4 The services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions.
- 25.2 The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

## **26. City Obligations**

- 26.1 City shall provide full information in a timely manner regarding requirements for and limitations on projects and Task Orders.
- 26.2 City shall establish and update, if necessary, overall project budgets, including engineering and construction costs.
- 26.3 City shall furnish the services of consultants, including geotechnical engineers, when such services are requested by Engineer, reasonably required by the scope of a project, and agreed to by City.
- 26.4 City shall furnish all testing as required by law or the contract documents.
- 26.5 City shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the City's needs and interests, after Engineer has performed requisite project management and oversight duties.
- 26.6 City shall provide prompt written notice to Engineer if City becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in Engineer's design or performance under the contract, or if City becomes aware of any development that affected the scope or timing of Engineer's services.
- 26.7 City shall pay Engineer in accordance with paragraph 3 and Exhibit D of this Contract, upon receipt of Engineer's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed, or progress made on a project to date, on a pro rata basis.
- 26.8 City shall report the total amount of all payments to Engineer, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.
- 26.9 City shall guarantee access to, and make all provisions for Engineer to enter upon public and private property necessary for performance of the Scope of Work over which City exercises control.
- 26.10 Extra work or work on contingency tasks is not permitted unless authorized by the City in writing. Failure of Engineer to secure written authorization for extra work shall constitute a waiver of all rights to an adjustment in the Contract price or Contract time.
- 26.11 Timely review: City will examine Engineer's studies, reports, sketches, drawings, specifications, proposals, and other documents (and obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, or other

consultants to the extent that the City deems appropriate), and render in writing decisions required by City in a timely manner.

## **27. Arbitration**

- 27.1 All claims, disputes, and other matters in question between the City and Engineer arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof, except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance with Oregon's Uniform Arbitration Act ORS 36.600 et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Lane County Circuit Court will establish rules to govern the arbitration. The City shall have the sole discretion as to whether or not dispute will be decided by arbitration rather than through the court process.
- 27.2 A claim by Engineer arising out of, or relating to this Contract must be made in writing and delivered to the City not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the City within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the City will be considered by the City Council at the Council's next regularly scheduled meeting. At that meeting the Council will render a written decision approving or denying the claim. If the claim is denied by the Council, the Engineer may file a written request for arbitration with the City. No demand for arbitration shall be effective until the City Council has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the City Council has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the Council's decision being binding upon the City and Engineer.
- 27.3 Notice of demand for arbitration shall be filed in writing with the other party to the Contract. The demand for arbitration shall be made within the 30-day period specified above. The City, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, reject arbitration and require the other party to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

## **28. Joinder**

Notwithstanding any contrary language in other documents or agreements related to services provided by Engineer pursuant to this Contract, including contracts for construction services, either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact arising out of or related to this Contract and whose presence is required if complete relief is to be accorded. This Section applies to any and all claims, disputes, and other matters arising out of, or relating to this Contract, including but not limited those claims, disputes, and other matters subject to litigation or arbitration.

## **29. Attorney Fees**

If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this contract without initiating

litigation, Engineer agrees to pay City's attorney fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.

**30. Successors and Assigns; Subcontractors and Assignments**

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

**31. Limitation of Liabilities**

City shall not be liable for (i) any indirect, incidental, consequential, or special damages under the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. Engineer shall not be liable for any consequential damages under this Contract.

**32. Foreign Contractor**

If Engineer is not domiciled in or registered to do business in the state of Oregon, Engineer shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Engineer shall demonstrate its legal capacity to perform the work under this Contract in the state of Oregon prior to entering into this Contract.

**33. Confidentiality**

Engineer shall maintain the confidentiality of any of City's information that has been so marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Engineer from establishing a claim or defense in an adjudicatory proceeding. Engineer shall require similar agreements from City's and/or Engineer's subconsultants to maintain the confidentiality of information of City.

**34. Force Majeure**

Engineer shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war. In any such event, Engineer's schedule, and compensation for fixed-fee or for hourly-not-to-exceed projects, shall be equitably adjusted.

**35. Waivers**

No waiver by City of any provision of this Contract shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Engineer of the same or any other provision. City's consent to or approval of any act by Engineer requiring City's consent or approval shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Engineer, whether or not similar to the act so consented to or approved.

**36. Severability**

Any provision of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

**37. Headings**

The captions contained in this Contract are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

**38. Integration and Modification**

This Contract, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Contract. Any modifications or amendments to this Contract will only be effective when made in writing and signed by authorized parties for each party to this Contract.

**39. Authority**

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to make this Contract.

**40. Certificate of Compliance with Oregon Tax Laws**

By executing this Contract, Engineer certifies under penalty of perjury that Engineer is, to the best of Engineer's knowledge, not in violation of any Oregon tax laws described in ORS 305.385(6) and (7).

CITY OF COTTAGE GROVE

ENGINEER

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: City Manager

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

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

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

## Exhibit A

### Scope of Work

#### SERVICES AND RESPONSIBILITY OF ENGINEER

- A. Services shall be provided pursuant to City Task Order requests or as otherwise requested by City in writing. When authorized by City, the specific services which the Engineer shall furnish will generally consist of, but not be limited to, the following itemized services:
1. Engineering services for municipal systems including studies, designs and construction administration.
  2. Consultation with the City Manager and staff members on specific problems related to the City's facilities.
  3. Attend meetings, when requested by the City Manager, or when necessitated by project work underway.
  4. Project reviews, construction observation, and field surveying services.
  5. Miscellaneous technical services requested by the City Manager.
  6. Preparation of Federal and State Funding applications, as authorized by the City Manager.
  7. Plan review.
  8. Feasibility studies and facilities plans.
  9. Apprise City of applicable changes in state or federal law regarding engineering or design services where such changes in state and federal law directly affect the Engineer's work or the City's projects, and public works.
- B. Basic engineering services. When authorized by the City, Engineer will provide engineering services for improvement projects. These will generally consist of, but not be limited to, the following itemized services:
1. Preparation of plans and specifications ready for a call for bids.
  2. Tabulation of bids at bid opening, report same to the City, and assist in awarding Contracts for Construction.
  3. General observation of the work by observation trips to the job site on a periodic basis, as agreed with the City.
  4. Preparation and submittal of proposed contract change orders.
  5. Preparation of monthly progress payments to the Contractor.
  6. Final review of the project by the Engineer.
  7. Final acceptance of the project by the Engineer and recommendations accordingly to the City.
  8. Submission to the City of final quantities and costs.
  9. Furnish a set of "record" reproducible mylars, or other mutually agreed format suitable for long term preservation and storage.
- C. Special Services. In addition to the basic services provided under Section B above, special services of varying types may be required upon City's written request. Included in these services, but not limited to, are:
1. Resident observation – Provide the services of an observer, acceptable to the City, as requested when contracts have been let by the City for construction. The Observer shall keep a daily diary of work progress. The Observer shall check and approve all construction work, prepare record drawings of the construction work, and prepare the monthly progress payments to the Contractor. As used in this document, the term "record drawings" means a set of documents consisting of record

specifications and record drawings showing the reported location of the work. Record drawings are based on information provided by persons other than the Engineer, and the Engineer does not warrant their accuracy.

2. Redesigns – As ordered by the City after final plans have been completed.
3. Appearances before courts or boards on matters of litigation related to a project.
4. Preparation of operation and maintenance manuals and cost of duplication.
5. Printing of plans and specifications.
6. Preparation of planning studies or reports, including costs of duplication.
7. Coordinating and obtaining permits and arranging agency reviews. Fees for permits or agency review are excluded from Engineer's services, and will be paid by others.
8. Miscellaneous other technical services as may be assigned and for which Engineer has qualifications and/or expertise.
9. Consultant Services – (Various technical services for which City requires Engineer to manage, monitor or direct):
  - a. Field engineering – Survey crew to stakeout construction work, provide preliminary design surveys and design land surveys. Survey crew shall furnish all necessary equipment, instruments, transportation, stakes and subsistence required for field engineering.
  - b. Soils investigations – including test borings, related analysis and recommendations by the Engineer.
  - c. Laboratory tests, well tests, borings, specialized geological, or other studies recommended by the Engineer.
  - d. Other consultant services requested by City, such as mechanical, electrical, architectural, wetland, permitting and cost estimation services.

**Exhibit B  
Task Order Form**

Task Order No. \_\_\_\_

**City of Cottage Grove**

**Engineer Work**

**Dated:** \_\_\_\_\_

In accordance with the City Engineering Services Contract entered into between City of Cottage Grove (City) and \_\_\_\_\_ (Engineer), dated \_\_\_\_\_, 20\_\_ (Contract), Engineer is authorized to complete the scope of work defined in this Task Order according to the schedule and budget defined herein.

**SCOPE OF WORK**

The scope of work includes: \_\_\_\_\_,  
as further outlined in Exhibit A.

**BUDGET**

The costs for Engineer's services as defined herein, including reimbursables, shall not exceed \$\_\_\_\_\_.

**COMPENSATION**

Compensation shall be paid in accordance with Section 3 of the Contract and the Engineer's Schedule of Rate and Charges attached to the Contract as Exhibit E.

In accordance with Section 2.3 of the Contract, if additional funds are required to complete the services defined herein beyond the limit set above, Engineer shall notify City in writing prior to reaching the authorized limit, and will not proceed with work in excess of the limit without the prior written approval of City.

**SCHEDULE**

Work shall be initiated immediately upon issuance of this Task Order and the draft plan shall be completed within 60 days of issuance.

**TERMS AND CONDITIONS**

All work under this Task Order is governed by the terms and conditions of the Contract, unless otherwise specifically set forth herein.

## **Exhibit C**

### **PUBLIC CONTRACTING CODE REQUIREMENTS For ORS 279C Personal Service Contract**

1. Engineer shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the Work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
2. Engineer shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Engineer or any Subcontractor in connection with the performance of the Contract shall promptly be paid.
3. Engineer shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. Engineer and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. Engineer shall employ no person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, Engineer shall pay the employee at least time and one-half pay for: 1) all overtime in 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater, except for individuals under personal service contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime; or 2) work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G).
6. Pursuant to ORS 279C.520(2), the Engineer must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
7. Pursuant to ORS 279C.530(2), all employers, including Engineer, that employ subject workers who work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Engineer shall ensure that each of its subcontractors complies with these requirements.
8. All sums due the State Unemployment Compensation Fund from the Engineer or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
9. The Contract may be canceled at the election of Owner for any willful failure on the part of Engineer to faithfully perform the contract according to its terms.
10. Engineer certifies that it has not discriminated against minorities, women or emerging small business enterprises or a business enterprise that is controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontractors.
11. Engineer certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
12. In the performance of this Contract, the Engineer shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.

13. Pursuant to Owner's Public Contracting Rule 137-049-0880, the Owner may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records relating to the Contract.
14. Contractor shall ensure Owner's compliance with all applicable provisions of ORS 279C.527 and OAR Chapter 330 Division 135 regarding green energy technology requirements for new or major renovations of public buildings costing over \$5,000,000.
15. The following notice is applicable to Work involving excavation. "ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503) 232-1987."

**Exhibit D**

**Request for Proposal**

**Exhibit E**

**Engineer's Proposal**