



# City of Oregon City

625 Center Street  
Oregon City, OR 97045  
503-657-0891

## Meeting Agenda City Commission

*Dan Holladay, Mayor  
Brian Shaw, Commission President  
Nancy Ide, Frank O'Donnell, Renate Mengelberg*

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Wednesday, June 7, 2017

7:00 PM

Commission Chambers

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### **5:45 PM - EXECUTIVE SESSION OF THE CITY COMMISSION**

*The City Commission Executive Session will be held in the Clackamas River Conference room at City Hall.*

*Pursuant to ORS 192.660(2)(a): To consider the employment of a public officer, employee, staff member or individual agent.*

*Pursuant to ORS 192.660(2)(e): To conduct deliberations with persons designated by the governing body to negotiate real property transactions.*

*Pursuant to ORS 192.660(2)(h): To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.*

### **7:00 PM - REGULAR MEETING OF THE CITY COMMISSION**

1. **Convene Regular Meeting and Roll Call**
2. **Flag Salute**
3. **Ceremonies, Proclamations, and Appointments**
- 3a. [17-302](#) Mayoral Appointments to City Boards and Commissions
4. **Citizen Comments**

*Citizens are allowed up to 3 minutes to present information relevant to the City but not listed as an item on the agenda. Prior to speaking, citizens shall complete a comment form and deliver it to the City Recorder. The City Commission does not generally engage in dialog with those making comments, but may refer the issue to the City Manager. Complaints shall first be addressed at the department level prior to addressing the City Commission.*
5. **Adoption of the Agenda**
6. **Public Hearings**
- 6a. [17-337](#) First Reading of Ordinance No. 17-1007, Amendments to the Oregon City Municipal Code for Accessory Buildings/Structures and Uses (Planning File L 17-001)

**Sponsors:** Community Development Director Laura Terway  
**Attachments:** [Staff Report](#)  
[Ordinance No. 17-1007](#)  
[Exhibit A - Amended Sections of the Oregon City Municipal Code](#)  
[Exhibit B - Planning Staff Report](#)

## 7. General Business

## 8. Consent Agenda

*This section allows the City Commission to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may only be discussed if it is pulled from the consent agenda.*

- 8a. [17-332](#) Personal Services Agreement with the Friends of Willamette Falls Media Center for a Community Media Center for Production and Channel Management

**Sponsors:** City Recorder Kattie Riggs  
**Attachments:** [Staff Report](#)  
[Personal Services Agreement](#)  
[Exhibit A: Scope of Work and Rate Sheets](#)  
[Exhibit B: Standard Conditions](#)

- 8b. [17-331](#) First Amendment to Subscription Services Contract with Chaves Consulting for the Provision of Hosted Electronic Records Management System Services (ERMS) and Related Services

**Sponsors:** City Recorder Kattie Riggs  
**Attachments:** [Staff Report](#)  
[Amendment #1 to Subscription Services Contract](#)  
[Original Subscription Services Contract - Chaves Consulting](#)  
[Original ORMS Master Services Agreement](#)

- 8c. [PUB 17-008](#) Public Improvement Contract with Telfer Pavement Technologies, LLC for the 2017 Oregon City Preventive Pavement Maintenance Type III Micro-Surfacing Project

**Sponsors:** Public Works Director John Lewis  
**Attachments:** [Staff Report](#)  
[Contract Agreement](#)  
[Project Maps](#)  
[Micro-Surfacing Bid Tab](#)

- 8d. [17-338](#) Amendment No. 2 of Personal Services Agreement (PS 17-001) with Geotechnical Resources, Inc., to Provide Geotechnical Services for Mitigation Recommendations and Monitoring related to Trillium Park Drive Landslide

**Sponsors:** Public Works Director John Lewis



**Attachments:**   [Staff Report](#)  
[Amendment 2 of PSA with GRI](#)  
[Amendment No. 1 with GRI](#)  
[Personal Services Agreement with GRI](#)  
[Site Map & Lidar Map.pdf](#)

**9.      Communications**

**a.      City Manager**

**b.      Commission**

**c.      Mayor**

**10.     Adjournment**

*Citizen Comments: The following guidelines are given for citizens presenting information or raising issues relevant to the City but not listed on the agenda.*

*\*Complete a Comment Card prior to the meeting and submit it to the City Recorder.*

*\*When the Mayor calls your name, proceed to the speaker table and state your name and city of residence into the microphone.*

*\*Each speaker is given 3 minutes to speak. To assist in tracking your speaking time, refer to the timer on the table.*

*\*As a general practice, the City Commission does not engage in discussion with those making comments.*

*\*Electronic presentations are permitted, but shall be delivered to the City Recorder 48 hours in advance of the meeting.*

*Agenda Posted at City Hall, Pioneer Community Center, Library, City Web site.*

*Video Streaming & Broadcasts: The meeting is streamed live on Internet on the Oregon City's Web site at [www.orcity.org](http://www.orcity.org) and available on demand following the meeting. The meeting can be viewed live on Willamette Falls Television on channels 23 and 28 for Oregon City area residents. The meetings are also rebroadcast on WPMC. Please contact WPMC at 503-650-0275 for a programming schedule.*

*City Hall is wheelchair accessible with entry ramps and handicapped parking located on the east side of the building. Hearing devices may be requested from the City Recorder prior to the meeting. Disabled individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.*



# City of Oregon City

625 Center Street  
Oregon City, OR 97045  
503-657-0891

## Staff Report

File Number: 17-302

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**Agenda Date:** 6/7/2017

**Status:** Agenda Ready

**To:** City Commission

**Agenda #:** 3a.

**From:**

**File Type:** Appointment

**SUBJECT:**

Mayoral Appointments to City Boards and Commissions



# City of Oregon City

625 Center Street  
Oregon City, OR 97045  
503-657-0891

## Staff Report

File Number: 17-337

**Agenda Date:** 6/7/2017

**Status:** Public Hearing

**To:** City Commission

**Agenda #:** 6a.

**From:** Community Development Director Laura Terway

**File Type:** Ordinance

### **SUBJECT:**

First Reading of Ordinance No. 17-1007, Amendments to the Oregon City Municipal Code for Accessory Buildings/Structures and Uses (Planning File L 17-001)

### **RECOMMENDED ACTION (Motion):**

Staff recommends the City Commission approve the first reading of Ordinance No. 17-1007 and Planning file L 17-0001.

### **BACKGROUND:**

The Planning Division has proposed amendments to the Oregon City Municipal Code modifying the development standards for accessory buildings/structures and relocating regulations for hooved animals. The amendments were created with input from the public, City Commission, Citizen Involvement Committee, Planning Commission, and the Development Stakeholders Group and will provide greater flexibility for property owners transparency in the Oregon City Municipal Code. The amendments include the following:

1. Currently, metal sided accessory buildings in residential zones are not allowed when viable from the adjacent right-of-way and all accessory buildings 200 square feet or greater must be constructed with the same exterior building materials as the onsite dwelling(s), or an acceptable substitute. The proposed code language will allow any exterior building material, including metal, for residential accessory structures except for membrane or fabric covered storage areas or cargo containers.
2. Currently, accessory structures must comply with the setbacks of the zoning designation, though structures with a footprint less than 200 square feet in size as well as one structure with a footprint up to 600 square feet may be placed closer to the property line if the building complies with restrictions, such as a maximum height of 14 feet. The proposed code language would:
  - a. Increase the height for the reduced setback from 14 feet to 17 feet
  - b. Remove any building separation requirements for the reduction
  - c. Apply the reduced setback to the corner setback
3. The proposed code would allow accessory structures constructed prior to January 1, 2017 to remain which are located behind the front building line of a home but do not comply with the setback and height requirements, except as otherwise limited through an applicable overlay district. Building code regulations would apply.

4. Relocate code language for hooved animals to the animal chapter of the Code.
5. Allow temporary structures within the right-of-way.
6. Allow temporary structures for commercial, industrial, mixed use, multi-family, and institutional properties.
7. Clarify standards prohibiting tarps and allowing membrane or fabric covered storage areas as temporary structures.
8. Remove code language for firework and Christmas tree sales, and instead regulate temporary structures.

The public hearing is open and the public is encouraged to provide comment on the Legislative application.

## ORDINANCE NO. 17-1007

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### **AN ORDINANCE OF THE CITY OF OREGON CITY ADOPTING AMENDMENTS TO OREGON CITY MUNICIPAL CODE CHAPTER 6.07 HOOVED ANIMALS; CHAPTER 17.04, DEFINITIONS; CHAPTER 17.54, SUPPLEMENTAL ZONING REGULATIONS AND EXCEPTIONS; AND CHAPTER 17.62, SITE PLAN AND DESIGN REVIEW**

**WHEREAS**, the City of Oregon City Planning Division reviews and regulates the use of private and public property by applying the Oregon City Municipal Code; and

**WHEREAS**, the Oregon City Municipal Code contains development standards for accessory buildings/structures and accessory uses of property; and

**WHEREAS**, the Planning Division has written amendments to the Oregon City Municipal Code modifying the development standards for accessory buildings/structures and relocating regulations for hooved animals; and

**WHEREAS**, the amendments were created with input from the public, Citizen Involvement Committee, Planning Commission, Development Stakeholder Group; and

**WHEREAS**, the amendments will provide greater flexibility for property owners; and

**WHEREAS**, the amendments will result in greater transparency within the Oregon City Municipal Code; and

**WHEREAS**, the City's Comprehensive Plan anticipates the need for amendments from time to time, in order to maintain a balance of predictability for developers and neighborhood livability for residents.

### **NOW, THEREFORE, THE CITY OF OREGON CITY ORDAINS AS FOLLOWS:**

**Section 1.** The City hereby amends the portions of the existing Oregon City Municipal Code Chapter 17.04, entitled Definitions, 17.62, entitled Site Plan and Design Review, Chapter 17.54, entitled Supplemental Zoning Regulations and Exceptions, and adopts a new Chapter 6.07, entitled Hooved Animals which are attached hereto as Exhibit 'A'.

**Section 2.** The Commission adopts the "Staff Report and Recommendation for Legislative File: L 17-01" that are attached hereto as Exhibit 'B' and incorporated herein to support the City's decision.

**Section 3.** Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

**Section 4.** Effectiveness. This Ordinance shall take effect 30 days from the date of adoption.

Read for the first time at a regular meeting of the City Commission held on the 7th day of June 2017, and the City Commission finally enacted the foregoing ordinance this 21st day of June 2017.

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DAN HOLLADAY, Mayor

Attested to this 21st day of June 2017:

Approved as to legal sufficiency:

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Kattie Riggs, City Recorder

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City Attorney

**ATTACHMENTS:**

Exhibit A – Amended Sections of the Oregon City Municipal Code

Exhibit B – Planning Staff Report

## **Exhibit A**

### **AMENDMENTS TO THE OREGON CITY MUNICIPAL CODE (OCMC)**

*May 31, 2017*

#### **17.04.010 – Accessory Building or Accessory Structure**

"Accessory building", or "accessory structure" means a detached building or structure subordinate in size and use, but located on the same lot as, a principal building.

#### **17.04.743 - Membrane or fabric covered storage area.**

A metal sided cargo container or an area covered by a tarp or fabric membrane or that is either attached to a rigid framework, natural feature or some other structure that is used for storage. It is not intended to include the weather proofing of a vehicle, boat or other individual item by a tarp or other type of covering as long as the covering is attached directly to and covers only the particular item.

#### **17.04.177 - Cargo Container**

A standardized, reusable vessel that is or appears to be: (1) originally, specifically or formerly designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities, or (2) designed for being mounted or moved on a rail car, or (3) designed for or capable of being mounted on a chassis or bogie for movement by truck trailer or loaded on a ship.

#### **17.04.1271 – Temporary Structure**

A temporary structure permitted in Chapter 17.62 or 17.54.010 of the Oregon City Municipal Code, excluding mobile vendors.

#### **17.04.766 – Mobile Vendor**

A vendor or seller of merchandise, food, services, etc. from a motorized or towed vehicle including a wheeled trailer capable of being towed by a vehicle.

### **17.62.035 - Minor site plan and design review.**

This section provides for a minor site plan and design review process. Minor Site Plan Review is a Type I or Type II decision, as described in OCMC Section 17.62.035(A), subject to administrative proceedings described in OCMC Section 17.50 and may be utilized as the appropriate review process only when authorized by the community development director. The purpose of this type of review is to expedite design review standards for uses and activities that require only a minimal amount of review, typical of minor modifications and/or changes to existing uses or buildings.

#### **A. Type I Minor Site Plan and Design Review.**

1. Applicability. Type I applications involve no discretion. The Type I process is not applicable for:
  - a. Any activity which is included with or initiates actions that require Type II-IV review.
  - b. Any use which is not permitted outright, unless otherwise noted.
  - c. Any proposal in which nonconforming upgrades are required under Chapter 17.58.
  - d. Any proposal in which modifications are proposed under Section 17.62.015.
2. The following projects may be processed as a Type I application.
  - a. Addition or removal of up to two hundred square feet to a commercial, institutional, or multifamily structure in which no increases are required to off-street parking. This includes a new ancillary structure, addition to an existing structure, or new interior space (excluding new drive thru). Increases of more than two hundred square feet in a twelve-month period shall be processed as Type II.
  - b. Addition or removal of up to one thousand square feet to an industrial use in which no increases are required to off-street parking. This includes a new ancillary structure, addition to an existing structure, or new interior space (excluding ancillary retail and office). Increases of more than one thousand square feet in a twelve-month period shall be processed as Type II.
  - c. Temporary Structures, excluding mobile vendors.
  - d. Removal, replacement or addition of awnings, or architectural projections to existing structures.
  - e. Addition, modification, or relocation of refuse enclosure.
  - f. Changes to amount, location, or design of bicycle parking.
  - g. Installation of mechanical equipment.
  - h. Repaving of previously approved parking lots with no change to striping.
  - i. Replacement of exterior building materials.
  - j. Addition of windows and doors, relocation of windows and doors in which transparency levels remain unchanged, or removal of windows and doors provided minimum transparency requirements are still met.
  - k. Addition or alteration of parapets or rooflines.
  - l. Modification of building entrances.
  - m. Addition to or alteration of a legal nonconforming single or two-family dwelling.
  - n. Change to parking lot circulation or layout, excluding driveway modifications.
  - o. Removal or relocation of vehicle parking stalls provided total parking remains between approved minimum and maximum with no new reductions other than through the downtown parking district.
  - p. Adoption of shared parking agreements.
  - q. Changes to landscaping that do not require stormwater quality and quantity treatment under OCMC Chapter 13.12.
  - r. New or changes to existing pedestrian accessways, walkways or plazas.
  - s. Installation of or alterations to ADA accessibility site elements.



- t. Modification of a fence, hedge, or wall, or addition of a fence, hedge or wall at least twenty feet away from a public right-of-way.
  - u. Addition of or alterations to outdoor lighting.
- 3. Submittal requirements. A Type I application shall include:
  - a. A narrative describing the project.
  - b. Site plan drawings showing existing conditions/uses and proposed conditions/uses.
  - c. Architectural drawings, including building elevations and envelopes, if architectural work is proposed.
  - d. A completed application form.
  - e. Any other information determined necessary by the Community Development Director.
- A. Type II Minor Site Plan and Design Review.
  - 1. Type II Minor site plan and design review applies to the following uses and activities unless those uses and activities qualify for Type I review per Section 17.62.035(A):
    - a. Modification of an office, commercial, industrial, institutional, public or multi-family structure for the purpose of enhancing the aesthetics of the building and not increasing the interior usable space (for example covered walkways or entryways, addition of unoccupied features such as clock tower, etc.).
    - b. Modification to parking lot layout and landscaping, or the addition of up to five parking spaces.
    - c. A maximum addition of up to one thousand square feet to a commercial, office, institutional, public, multi-family, or industrial building provided that the addition is not more than thirty-five percent of the original building square footage.
    - d. Other land uses and activities may be added if the community development director makes written findings that the activity/use will not increase off-site impacts and is consistent with the type and/or scale of activities/uses listed above.
  - 2. Application. The application for the Type II minor site plan and design review shall contain the following elements:
    - a. The submittal requirements of Chapter 17.50.
    - b. A narrative explaining all aspects of the proposal in detail and addressing each of the criteria listed in Section 17.62.035(C) below.
    - c. Site plan drawings showing existing conditions/uses and proposed conditions/uses.
    - d. Architectural drawings, including building elevations and envelopes, if architectural work is proposed.
    - e. Additional submittal material may be required by the community development director on a case-by-case basis.
  - 3. Development Standards for Type II Minor Site Plan and Design Review.
    - a. All development shall comply with Section 17.62.050(1—7 and 8—15 and 20—22) when deemed applicable by the community development director. Other sections may apply, as directed by the community development director when applicable, in order to show compliance with this chapter, such as the commercial and institutional standards of Section 17.62.055.

#### **17.54.010 - Accessory Structures and Uses.**

Accessory structures and uses shall comply with all requirements for the principal use except where specifically modified by this title and shall comply with the following standards:

- A. Signs. Signs shall be permitted as provided in Chapter 15.28.
- B. Residential Accessory Structures including Accessory Dwellings Units. The section applies to accessory structures within the R-10, R-8, R-6, R-5 and R-3.5 zoning districts and accessory structures on properties with a primary use as a single or two-family dwelling but within a zoning designation not listed above.
  - 1. Accessory Structures with a Footprint Less than Two Hundred (200) Square Feet:
    - a. Shall be located behind the front line of the primary structure; and
    - b. Shall comply with the dimensional standards of the zoning designation including height and setbacks unless modified pursuant to (c); and
    - c. Side and rear setbacks may be reduced to not less than three (3) feet for the accessory structure and its projections if the height does not exceed seventeen (17) feet as defined in section 17.04.550.
  - 2. Accessory Structures with a Footprint from Two Hundred to Six Hundred Square Feet:
    - a. Shall be located behind the front line of the primary structure; and
    - b. Shall comply with the dimensional standards of the zoning designation, including height, setbacks, and lot coverage unless modified pursuant to (c); and
    - c. Side and rear setbacks may be reduced to not less than three (3) feet for one accessory structure and its projections if the height does not exceed seventeen (17) feet as defined in section 17.04.550.
  - 3. Accessory Structures with a Footprint Over Six Hundred Square Feet.
    - a. Shall not exceed more than one accessory structure with a footprint in excess of six hundred (600) square feet per parcel; and
    - b. The parcel shall be in excess of twenty thousand (20,000) square feet; and
    - c. The footprint shall not exceed the footprint of the primary structure; and
    - d. Shall not exceed eight hundred square feet (800); and
    - e. Shall not exceed the height of the primary structure; and
    - f. Shall be located behind the front line of the primary structure; and
    - g. Shall comply with the dimensional standards of the zoning designation including height, setbacks, and lot coverage.
  - 4. Prohibited:
    - a. Cargo containers
    - b. Membrane and fabric covered storage areas visible from the adjacent right-of-way.
    - c. Metal structures within a historic district, or on an individually designated historic property, unless otherwise authorized by OCMC Chapter 17.40.
  - 5. An accessory structure housing a hooved animal shall be located a minimum of twenty-five (25) feet from any property line.
  - 6. Accessory structures constructed prior to January 1, 2017 which are located behind the front building line of the primary structure are exempt from the setback and height requirements in this chapter, except as otherwise limited through an applicable overlay district.
  - 7. Swimming Pools. In-ground and above-ground swimming pools shall be constructed not less than three feet from the side or rear yard lines. Swimming pools shall comply with the front yard setback requirements for the principal structure. A pool must be surrounded by a fence no less than four feet in height or a suitable alternative such as a locked or electric cover, approved by the Building Official.

C. Temporary Structures in the Right-of-Way

This section applies to temporary structures associated with permitted events in the right-of-way. Temporary structures:

1. May be constructed of any building material; and
2. Shall comply with all provisions of the Americans with Disabilities Act; and
3. Shall be exempt from all sections of Chapter 12.04, 12.08, 17.52 and 17.62.

**17.54.060 - Seasonal sales. [Delete]**

**6.07 Hooved Animals**

**6.07.030 – Hooved Animals**

One horse or other domestic hoofed animal is permitted for each twenty thousand square feet of lot area and in compliance with Chapter 17.54.010 and all other the requirements of the Oregon City Municipal Code.

### **17.62.050.A.21 Building Materials**

- a. Preferred building materials. Building exteriors shall be constructed from high quality, durable materials. Preferred exterior building materials that reflect the city's desired traditional character are as follows:
  - i. Brick.
  - ii. Basalt stone or basalt veneer.
  - iii. Narrow horizontal wood or composite siding (generally five inches wide or less); wider siding will be considered where there is a historic precedent.
  - iv. Board and baton siding.
  - a. Other materials subject to approval by the community development director.
  - vi. Plywood with battens or fiber/composite panels with concealed fasteners and contiguous aluminum sections at each joint that are either horizontally or vertically aligned.
  - vii. Stucco shall be trimmed in wood, masonry, or other approved materials and shall be sheltered from extreme weather by roof overhangs or other methods.
- b. Prohibited materials. The following materials shall be prohibited in visible locations unless an exception is granted by the community development director based on the integration of the material into the overall design of the structure.
  - i. Vinyl or plywood siding (including T-111 or similar plywood).
  - ii. Glass block or highly tinted, reflected, translucent or mirrored glass (except stained glass) as more than ten percent of the building facade.
  - iii. Corrugated fiberglass.
  - iv. Chain link fencing (except for temporary purposes such as a construction site or as a gate for a refuse enclosure).
  - v. Crushed colored rock/crushed tumbled glass.
  - vi. Non-corrugated and highly reflective sheet metal.
  - vii. Tarps, except for the protection of outside storage.
- c. Special material standards: The following materials are allowed if they comply with the requirements found below:
  - 1. Concrete block. When used for the front façade of any building, concrete blocks shall be split, rock- or ground-faced and shall not be the prominent material of the elevation. Plain concrete block or plain concrete may be used as foundation material if the foundation material is not revealed more than 3 feet above the finished grade level adjacent to the foundation wall.
  - 2. Metal siding. Metal siding shall have visible corner moldings and trim and incorporate masonry or other similar durable/permanent material near the ground level (first two feet above ground level) except when used for a temporary structure.
  - 3. Exterior Insulation and Finish System (EIFS) and similar troweled finishes shall be trimmed in wood, masonry, or other approved materials and shall be sheltered from extreme weather by roof overhangs or other methods.
  - 4. Building surfaces shall be maintained in a clean condition and painted surfaces shall be maintained to prevent or repair peeling, blistered or cracking paint.
  - 5. Membrane or fabric covered storage areas are permitted as temporary structures, excluding the use of tarps.

### **17.62.050.A.23 Temporary Structures**

Temporary structures are permitted pursuant to the following standards:

- A. For Structures up to 200 Square Feet:
  - a. Shall not be on a property for more than three (3) consecutive days; and
  - b. Shall not be on a property more than six (6) times per year; and
  - c. Shall comply with the dimensional standards of the zoning designation; and
  - d. Shall be sited so as to leave the minimum number of parking spaces for the primary uses as required by OCMC 17.52 or as otherwise specified in a land use approval;
  - e. Shall not disturb ingress or egress to the site; and
  - f. Shall be exempt from all sections of Chapter 12.04, 12.08, 17.52 and 17.62 except 17.62.050.A.23, 17.62.050.A.21.
- B. Temporary structures larger than 200 square feet may be permitted up to two (2) times per year; and
  - a. Structure larger than 200 square feet up to 800 Square Feet
    - i. Shall not be on a property for more than thirty (30) consecutive days;
    - ii. Shall comply with the dimensional standards of the zoning designation;
    - iii. Shall be sited so as to leave the minimum number of parking spaces for the primary uses as required by OCMC 17.52 or as otherwise specified in a land use approval;
    - iv. Shall not disturb ingress or egress to the site; and
    - v. Shall be exempt from all sections of Chapter 12.04, 12.08, 17.52 and 17.62 except 17.62.050.A.23, 17.62.050.A.21.
  - b. Structures Larger Than 800 Square Feet
    - i. Shall not be on a property for more than seven (7) consecutive days;
    - ii. Shall comply with the dimensional standards of the zoning designation;
    - iii. Shall be sited so as to leave the minimum number of parking spaces for the primary uses as required by OCMC 17.52 or as otherwise specified in a land use approval;
    - iv. Shall not disturb ingress or egress to the site; and
    - v. Shall be exempt from all sections of Chapter 12.04, 12.08, 17.52 and 17.62 except 17.62.050.A.23, 17.62.050.A.21.
- C. Government owned properties are exempt from all sections of Chapter 12.04, 12.08, 17.52 and 17.62 except 17.62.050.A.23.C, 17.62.050.A.21 and the dimensional standards of the zoning designation.



FILE NO.: L-17-0001

APPLICATION TYPE: Legislative

HEARING DATES: City Commission  
7:00 p.m., June 7, 2017  
Commission Chambers, 625 Center St, Oregon City, OR 97045

APPLICANT: Oregon City Community Development Department

REQUEST: Proposed amendments to the Oregon City Municipal Code. Supplemental Zoning Regulations and Exceptions in Chapter 17.54.010, Definitions in Chapter 17.04.743, Site Plan and Design Review in Chapter 17.62, and Hooved Animals in Chapter 6.07.

LOCATION: City-Wide

REVIEWER: Trevor Martin, Planner

RECOMMENDATION: Staff recommends approval of this application based on the satisfaction of all required criteria for a Legislative action.

PROCESS: OCMC 17.50.170.

- A. *Purpose. Legislative actions involve the adoption or amendment of the city's land use regulations, comprehensive plan, maps, inventories and other policy documents that affect the entire city or large portions of it. Legislative actions which affect land use must begin with a public hearing before the planning commission.*
- B. *Planning Commission Review.*
  1. *Hearing Required. The planning commission shall hold at least one public hearing before recommending action on a legislative proposal. Any interested person may appear and provide written or oral testimony on the proposal at or prior to the hearing. The community development director shall notify the Oregon Department of Land Conservation and Development (DLCD) as required by the post-acknowledgment procedures of ORS 197.610 to 197.625, as applicable.*
  2. *The community development director's Report. Once the planning commission hearing has been scheduled and noticed in accordance with Section 17.50.090(C) and any other applicable laws, the community development director shall prepare and make available a report on the legislative proposal at least seven days prior to the hearing.*

3. *Planning Commission Recommendation. At the conclusion of the hearing, the planning commission shall adopt a recommendation on the proposal to the city commission. The planning commission shall make a report and recommendation to the city commission on all legislative proposals. If the planning commission recommends adoption of some form of the proposal, the planning commission shall prepare and forward to the city commission a report and recommendation to that effect.*
- C. *City Commission Review.*
1. *City Commission Action. Upon a recommendation from the planning commission on a legislative action, the city commission shall hold at least one public hearing on the proposal. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the city commission may adopt, modify or reject the legislative proposal, or it may remand the matter to the planning commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby amend the city's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents, the city commission decision shall be enacted as an ordinance.*
  2. *Notice of Final Decision. Not later than five days following the city commission final decision, the community development director shall mail notice of the decision to DLCD in accordance with ORS 197.615(2).*

IF YOU HAVE ANY QUESTIONS ABOUT THIS APPLICATION, PLEASE CONTACT TREVOR MARTIN IN THE PLANNING DIVISION OFFICE AT 722-3789.

## I. PROPOSAL

The Oregon City Municipal Code currently prohibits most fabric and metal accessory buildings, known as membrane structures, when visible from the adjacent sidewalk or right-of-way. In 2016, the City received a significant number of Code Enforcement complaints about membrane structures, which led to a conversation by the City Commission to determine if the regulations should be amended. The applicable standards and associated violations were discussed at a series of City Commission meetings. With primary direction from the City Commission at a work session on December 13, 2016, staff assembled the proposed amendments to the Oregon City Municipal Code in Exhibit A, which generally include the following:

1. Currently, metal sided accessory buildings in residential zones are not allowed when visible from the adjacent right-of-way and all accessory buildings 200 square feet or greater must be constructed with the same exterior building materials as the onsite dwelling(s), or an acceptable substitute. The proposed code language will allow any exterior building material, including metal, for residential accessory structures except for membrane or fabric covered storage areas or cargo containers.
2. Currently, accessory structures must comply with the setbacks of the zoning designation, though structures with a footprint less than 200 square feet in size as well as one structure with a footprint up to 600 square feet may be placed closer to the property line if the building complies with restrictions, such as a maximum height of 14 feet. The proposed code language would:
  - a. Increase the height for the reduced setback from 14 feet to 17 feet
  - b. Remove any building separation requirements for the reduction

- c. Apply the reduced setback to the corner setback
- 3. The proposed code would allow accessory structures constructed prior to January 1, 2017 to remain which are located behind the front building line of a home but do not comply with the setback and height requirements, except as otherwise limited through an applicable overlay district. Building code regulations would apply.
- 4. Relocate code language for hooved animals to the animal chapter of the Code.
- 5. Allow temporary structures within the right-of-way.
- 6. Allow temporary structures for commercial, industrial, mixed use, multi-family, and institutional properties which include allowing:
  - a. Temporary structures up to 200 square feet for up to 3 consecutive days, 6 times per year
  - b. Temporary structures larger than 200 square feet would be allowed up to twice a year for the following timeframe:
    - i. 201-800 square feet: up to 30 consecutive days
    - ii. More than 800 square feet: up to 7 consecutive days
- 7. Clarify standards prohibiting tarps and allowing membrane or fabric covered storage areas as temporary structures.
- 8. Remove code language for firework and Christmas tree sales, and instead regulate temporary structures.

Note the propose language is likely to be amended as public comments are received and through the review process. An associated fee resolution will be presented before the City commission for the review of temporary structures.

## **II. FACTS**

### **A. AREA AFFECTED: CITY WIDE**

The proposed code changes will impact all properties within Oregon City.

### **B. PUBLIC NOTICE**

Public Notice was provided more than 20 days prior to the first evidentiary hearing via email to affected agencies, neighborhood associations and Oregon City boards and committees, and published in the Oregon City News / Clackamas Review. Notice of the proposed amendment was provided to property owners in Code Enforcement for issues related to the proposed code amendment, a variety of groups and government agencies including, Metro and the Department of the Land Conservation and Development. A Measure 56 Notice was not required since the proposal does not further restrict existing allowable uses of land or rezone land. The Planning Division held a meeting with the Citizen Involvement Committee on April 3, 2017, a meeting with the Development Stakeholders Group on May 4, 2017, and a Work Session with the Planning Commission on April 10, 2017 to discuss the proposal and how the proposed changes would affect properties. No written comments were received regarding this proposal.



### C. PUBLIC OUTREACH PROCESS

Staff has employed a variety of methods to engage and educate the public about the process, including:

- Presentation to the Citizen Involvement Committee,
- Work sessions with the Planning Commission, and
- Public Notices

## III. DECISION-MAKING CRITERIA:

### OREGON CITY MUNICIPAL CODE (OCMC)

#### CHAPTER 17.68 ZONING CHANGES AND AMENDMENTS

##### **17.68.010** *Initiation of the amendment.*

*A text amendment to this title or the comprehensive plan, or an amendment to the zoning map or the comprehensive plan map, may be initiated by:*

*A. A resolution by the commission;*

*B. An official proposal by the planning commission;*

*C. An application to the planning division presented on forms and accompanied by information prescribed by the planning commission.*

*All requests for amendment or change in this title shall be referred to the planning commission.*

**Finding: Complies as Proposed.** The text amendments to the Oregon City Municipal Code and was initiated by the City Commission. Staff finds that the proposal is consistent with 17.68.010.

##### **17.68.020** *Criteria.*

*The criteria for a zone change are set forth as follows:*

#### **A. The proposal shall be consistent with the goals and policies of the comprehensive plan.**

Statewide Planning Goals are also shown to indicate how the Oregon City Comprehensive Plan (OCCP) Goals and Policies implement the applicable Statewide Planning Goal.

#### *STATEWIDE PLANNING GOAL 1 – CITIZEN INVOLVEMENT*

*To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

##### *OCCP Goal 1.1 Citizen Involvement Program*

*Implement a Citizen Involvement Program that will provide an active and systematic process for citizen participation in all phases of the land-use decision making process to enable citizens to consider and act upon a broad range of issues affecting the livability, community sustainability, and quality of neighborhoods and the community as a whole.*

##### *OCCP Policy 1.1.1*

*Utilize neighborhood associations as the vehicle for neighborhood-based input to meet the requirements of the Land Conservation and Development Commission (LCDC) Statewide Planning Goal 1, Citizen Involvement. The Citizen Involvement Committee (CIC) shall serve as the officially recognized citizen committee needed to meet LCDC Statewide Planning Goal 1.*

*OCCP Goal 1.2 Community and Comprehensive Planning*

*Ensure that citizens, neighborhood groups, and affected property owners are involved in all phases of the comprehensive planning program.*

*OCCP Policy 1.2.1*

*Encourage citizens to participate in appropriate government functions and land-use planning.*

*OCCP Policy 1.2.1*

*Encourage development and refinement of CIC and neighborhood association bylaws that will govern the groups' formation and operations.*

*OCCP Goal 1.3 Community Education*

*Provide education for individuals, groups, and communities to ensure effective participation in decision-making processes that affect the livability of neighborhoods.*

*OCCP Goal 1.4 Community Involvement*

*Provide complete information for individuals, groups, and communities to participate in public policy planning and implementation of policies.*

*OCCP Policy 1.4.1*

*Notify citizens about community involvement opportunities when they occur.*

**Finding: Complies as Proposed.** The proposed code amendments were first identified by citizens who came before the City Commission. The City Commission met to discuss this topic multiple times before providing direction to staff regarding these changes. The proposed amendments has been presented to the Citizen Involvement Committee, Development Stakeholders Group, as well as in a work session with the Planning Commission prior to the first public hearing. In addition, the proposed code amendment has been posted on the City website at <http://www.orcity.org/planning/project/1-17-01>, emailed to various entities including neighborhood associations and the Citizen Involvement Committee, and posted in a general circulation newspaper.

The following meetings, work sessions and open houses were held to provide information about the impact of the proposed code amendments and gather input from the public about the proposed regulations.

Month	Meeting	Date
April		
	Citizen Involvement Committee	April 3, 2017

	Planning Commission	April 10, 2017
May		
	Development Stakeholders Group	May 4, 2017

Staff finds that the proposal is consistent with OCCP Goals 1.1, 1.2, 1.3 and 1.4.

#### *STATEWIDE PLANNING GOAL 2 – LAND USE PLANNING*

*To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

##### *OCCP Goal 2.1 Efficient Use of Land*

*Ensure that property planned for residential, commercial, office, and industrial uses is used efficiently and that land is developed following principles of sustainable development.*

**Finding: Complies as Proposed.** The proposed code amendments include opportunities to utilize property to a much greater extent including:

- Residential. Reductions for the interior corner setback for residential accessory structures in certain cases, increased building height for accessory structures with a reduced setback, allowing metal accessory structures, allowing temporary structures in the right-of-way, and general amendments to provide clarity to the Oregon City Municipal Code. The changes will provide an opportunity for some properties to construct accessory structures onsite that would not have otherwise.
- Institutional, Commercial, Industrial, Mixed Use, and Multi-Family Property: The proposed amendments will allow temporary structures within the right-of-way, temporary structures on institutional, commercial, industrial, mixed use, and multi-family property, and general amendments to provide clarity to the Oregon City Municipal Code. The result will allow land to be used more efficiently and business to operate with special events in Oregon City. Staff finds that the proposal is consistent with OCCP Goal 2.1.

##### *OCCP Goal 2.4 Neighborhood Livability*

*Provide a sense of place and identity for residents and visitors by protecting and maintaining neighborhoods as the basic unit of community life in Oregon City while implementing the goals and policies of the other sections of the Comprehensive Plan.*

**Finding: Complies as Proposed.** The proposed code amendments identified within this report will allow greater flexibility for property owners. Property owners will be able to retain existing structures which do not comply with height or setback requirements and will furthermore be provided the opportunity to construct a shed in locations where they cannot today. The changes will provide an opportunity for some properties to construct accessory structures onsite. Staff finds that the proposal is consistent with OCCP Goal 2.4.

##### *OCCP Policy 2.4.2*

*Strive to establish facilities and land uses in every neighborhood that help give vibrancy, a sense of place, and a feeling of uniqueness; such as activity centers and points of interest.*

**Finding: Complies as Proposed.** The proposed code amendments identified within this report will allow greater flexibility for property owners. Property owners will be able to retain existing structures which do not comply with height or setback requirements and will furthermore be provided the opportunity to construct a shed in locations where they cannot today. The changes will provide an opportunity for some properties to construct accessory structures onsite. Staff finds that the proposal is consistent with OCCP Policy 2.4.2.

#### *STATEWIDE PLANNING GOAL 3: AGRICULTURAL LANDS*

**Finding: Complies as Proposed.** The proposed amendments would not preclude the use of agricultural lands.

#### *STATEWIDE PLANNING GOAL 4: FOREST LANDS*

**Finding: Complies as Proposed.** The proposed amendments would not preclude the use of forest lands.

#### *STATEWIDE PLANNING GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES* *Statewide Planning Goal 5 requires that open spaces and natural, scenic, and historic resources be protected.*

##### *OCCP Goal 5.3 Historic Resources*

*Encourage the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.*

**Finding: Complies as Proposed.** The proposed amendments would not preclude the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City. All development within a historic district or on an individually designated property is subject to review for compliance with Chapter 17.40 of the Oregon City Municipal code and the allowance of metal residential accessory structures is prohibited, unless otherwise authorized by OCMC 17.40. Staff finds that the proposal is consistent with OCCP Goal 5.3.

##### *Policy 5.3.1*

*Encourage architectural design of new structures in local Historic Districts, and the central Downtown area to be compatible with the historic character of the surrounding area.*

**Finding: Complies as Proposed.** The proposed amendments would not preclude the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City. All development within a historic district or on an individually designated property is subject to review for compliance with Chapter 17.40 of the Oregon City Municipal code and the allowance of metal residential accessory structures is prohibited, unless otherwise authorized by OCMC 17.40. Staff finds that the proposal is consistent with OCCP policy 5.3.1.

#### *STATEWIDE PLANNING GOAL 6: AREAS SUBJECT TO NATURAL HAZARDS*

*To protect people and property from natural hazards.*

**Finding: Complies as Proposed.** The proposed amendments will not affect natural hazards overlay districts. All development within the overlay districts is subject to a more restrictive review. The overlay districts,

such as the Natural Resource Overlay District, Flood Management Overlay, and Geologic Hazards Overlay will apply regardless of the proposed changes. Staff finds that the proposal is consistent with OCCP Goal 6.

*STATEWIDE PLANNING GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS*

*To protect people and property from natural hazards.*

*OCCP Goal 7.1 Natural Hazards*

*Protect life and reduce property loss from the destruction associated with natural hazards*

**Finding: Complies as Proposed.** The proposed amendments will not affect natural hazards overlay districts. All development within the overlay districts is subject to a more restrictive review. The overlay districts, such as the Natural Resource Overlay District, Flood Management Overlay, and Geologic Hazards Overlay will apply regardless of the proposed changes. Staff finds that the proposal is consistent with OCCP Goal 7.1.

*STATEWIDE PLANNING GOAL 8: RECREATIONAL NEEDS*

*To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

**Finding: Complies as Proposed.** The proposed amendments will allow facilities to more easily host temporary events, such as those for recreation. Staff finds that the proposal is consistent with OCCP Goal 8.

*STATEWIDE GOAL 9: ECONOMIC DEVELOPMENT*

*To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

*OCCP Policy 9.2.1*

*Seek input from local businesses when making decisions that will have a significant economic impact on them.*

**Finding: Complies as Proposed.** The proposal has been sent to the Chamber of Commerce, as well as the Development Stakeholder Group, which consists of the public and members of the development community, for comments. Staff finds that the proposal is consistent with OCCP Policy 9.2.1.

*OCCP Policy 9.2.2*

*Carefully consider the economic impacts of proposed programs and regulations in the process of implementing the City's Comprehensive Plan.*

**Finding: Complies as Proposed.** The proposed amendments will codify the allowance of temporary structures within the right-of-way as well as on institutional, commercial, industrial, mixed use, and multi-family property, which will allow business as well as special event providers the opportunity for additional venues to operate their business in Oregon City. Staff finds that the proposal is consistent with OCCP Policy 9.2.2.

*OCCP Policy 9.2.3*

*Simplify, streamline, and continuously improve the permitting and development review process.*

**Finding: Complies as Proposed.** The proposed amendments will codify the allowance of temporary structures within the right-of-way as well as on institutional, commercial, industrial, mixed use, and multi-family property. Staff finds that the proposal is consistent with OCCP Policy 9.2.3.

*STATEWIDE PLANNING GOAL 10: HOUSING*

*To provide for the housing needs of citizens of the state.*

*OCCP Policy 10.1.2*

*Ensure active enforcement of the City of Oregon City Municipal Code regulations to ensure maintenance of housing stock in good condition and to protect neighborhood character and livability.*

**Finding: Complies as Proposed.** The allowance of metal structures on residential properties as well as allowing existing structures (located behind the front line of the home), and reducing the corner side setback for accessory structures in certain cases, will provide residences a greater opportunity for homeowners to use their property as they see fit. This could result in additional investment into the housing stock. Staff finds that the proposal is consistent with OCCP Policy 10.1.2

*OCCP Policy 10.1.4*

*Aim to reduce the isolation of income groups within communities by encouraging diversity in housing types within neighborhoods consistent with the Clackamas County Consolidated Plan, while ensuring that needed affordable housing is provided.*

**Finding: Complies as Proposed.** The proposed code amendments include reductions to the interior corner setback as well as allowing for increased height for single and two-family residential structures 3 feet from the property line. The changes will provide an opportunity for some properties to construct accessory structures onsite. The structures may accommodate accessory dwelling units which would result in a greater opportunity for housing opportunities throughout the city. Staff finds that the proposal is consistent with OCCP Policy 10.1.4

*OCCP Policy 10.1.7*

*Use a combination of incentives and development standards to promote and encourage well-designed single-family subdivisions and multi-family developments that result in neighborhood livability and stability.*

**Finding: Complies as Proposed.** The proposed code amendments include reductions to the interior corner setback as well as allowing for increased height for single and two-family residential structures 3 feet from the property line, in certain cases. The changes will provide an opportunity for some properties to construct accessory structures onsite. The structures may accommodate accessory dwelling units which would result in a greater opportunity for housing opportunities throughout the city.

In addition, the allowance of metal structures on these properties as well as allowing existing structures (located behind the front line of the home) will provide residences a greater opportunity to use their property as they see fit. Staff finds that the proposal is consistent with OCCP Policy 10.1.7.

*OCCP Goal 10.1 Diverse Housing Opportunities*

*Provide for the planning, development and preservation of a variety of housing types and lot sizes.*

**Finding: Complies as Proposed.** The proposed code amendments include reductions to the interior corner setback as well as allowing for increased height for residential structures 3 feet from the property line. The changes will provide an opportunity for some properties to construct accessory structures onsite. The structures may accommodate accessory dwelling units which would result in a greater opportunity for housing opportunities throughout the city.

*STATEWIDE PLANNING GOAL 11: PUBLIC FACILITIES AND SERVICES*

*To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

*OCCP Goal 11.4 Stormwater Management*

*Seek the most efficient and economical means available for constructing, operating, and maintaining the City's stormwater management system while protecting the environment and meeting regional, state, and federal standards for protection and restoration of water resources and fish and wildlife habitat.*

**Finding: Complies as Proposed.** The proposal would allow metal accessory structures for residential properties, temporary structures in the right-of-way, and temporary structures on institutional, commercial, industrial, mixed use, and multi-family property. Because the zoning designation currently allows structures, the impact of the structures on public facilities is already accounted for in the public facilities forecast models. Staff finds that the proposal is consistent with OCCP Goal 11.4.

*STATEWIDE PLANNING GOAL 12: TRANSPORTATION*

*To provide and encourage a safe, convenient and economic transportation system.*

**Finding: Complies as Proposed.** The proposal would allow metal accessory structures for residential properties, temporary structures in the right-of-way, and temporary structures on commercial, industrial, mixed use, and multi-family property. Because the zoning designation currently allows structures, the transportation impact of the structures associated with the code amendments is already accounted for in the transportation forecast models and thus does not alter the long term planned function or capacity of the transportation system. Staff finds that the proposal is consistent with OCCP Goal 12.

**B. *That public facilities and services (water, sewer, storm drainage, transportation, schools, police and fire protection) are presently capable of supporting the uses allowed by the zone, or can be made available prior to issuing a certificate of occupancy. Service shall be sufficient to support the range of uses and development allowed by the zone.***

**Finding: Complies as Proposed.** The proposal would allow metal accessory structures for residential properties, temporary structures in the right-of-way, and temporary structures on commercial, industrial, mixed use, and multi-family property. Because the zoning designation currently allows structures, the impact of the structures on public facilities is already accounted for in the public facilities forecast models. Staff finds that the proposal is consistent with OCCP Goal 12.B.

**C. *The land uses authorized by the proposal are consistent with the existing or planned function, capacity and level of service of the transportation system serving the proposed zoning district.***

**Finding: Complies as Proposed.** The proposal would allow metal accessory structures for residential properties, temporary structures in the right-of-way, and temporary structures on commercial, industrial, mixed use, and multi-family property. Because the zoning designation currently allows structures, the transportation impact of the structures associated with the code amendments is already accounted for in the transportation forecast models and thus does not alter the long term planned function or capacity of the transportation system. Staff finds that the proposal is consistent with OCCP Goal 12.C.

**D.        *Statewide planning goals shall be addressed if the comprehensive plan does not contain specific policies or provisions which control the amendment.***

**Finding:** The Oregon City Comprehensive Plan addresses the Statewide Planning Goals, as shown above under the findings for Criterion A.

#### **IV.        RECOMMENDATION**

Staff recommends that the Planning Commission recommend approval of the Municipal Code text amendments, to the City Commission as included in the Exhibits for their consideration.

#### **V.        EXHIBITS**

- A. Proposed Amendments to the Oregon City Municipal Code



# **DRAFT**

## **AMENDMENTS TO THE OREGON CITY MUNICIPAL CODE (OCMC)**

May 25, 2017

*Each proposed amendment below identifies if the proposed changes include modifying existing portions of the code, a replacement of a section, or a new section. Removal of language is ~~struck out~~ and new language is underlined.*

### **The Following Amendments Apply to Definitions in OCMC Chapter 17.04.**

#### **17.04.010 – Accessory Building or Accessory Structure**

"Accessory building", or "accessory structure" means a detached building or structure subordinate in size and use, but located on the same lot as, a principal building.

#### **17.04.743 - Membrane or fabric covered storage area. [Amend Existing Definition]**

A metal sided cargo container or an area covered by a tarp or tensioned metal or fabric membrane or that is either attached to a rigid framework, natural feature or some other structure that is used for storage. It is not intended to include the weather proofing of a vehicle, boat or other individual item by a tarp or other type of covering as long as the covering is attached directly to and covers only the particular item.

#### **17.04.177 - Cargo Container [New Definition]**

A standardized, reusable vessel that is or appears to be: (1) originally, specifically or formerly designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities, or (2) designed for being mounted or moved on a rail car, or (3) designed for or capable of being mounted on a chassis or bogie for movement by truck trailer or loaded on a ship.

#### **17.04.1271 – Temporary Structure [New Definition]**

A temporary structure permitted in Chapter 17.62 or 17.54.010 of the Oregon City Municipal Code, excluding mobile vendors.

#### **17.04.766 – Mobile Vendor [New Definition]**

A vendor or seller of merchandise, food, services, etc. from a motorized or towed vehicle including a wheeled trailer capable of being towed by a vehicle.

**The Following Amendments Apply to Accessory Structures and Uses in OCMC Chapter 17.54.**

**17.54.010 - Accessory Structures and Uses. [Replace Existing Section]**

Accessory structures and uses shall comply with all requirements for the principal use except where specifically modified by this title and shall comply with the following standards:

- A. Signs. Signs shall be permitted as provided in Chapter 15.28.
- B. Residential Accessory Structures including Accessory Dwellings Units. The section applies to accessory structures within the R-10, R-8, R-6, R-5 and R-3.5 zoning districts and accessory structures on properties with a primary use as a single or two-family dwelling but within a zoning designation not listed above.
  - 1. Accessory Structures with a Footprint Less than Two Hundred (200) Square Feet:
    - a. Shall be located behind the front line of the primary structure; and
    - b. Shall comply with the dimensional standards of the zoning designation including height and setbacks unless modified pursuant to (c); and
    - c. Side and rear setbacks may be reduced to not less than three (3) feet for the accessory structure and its projections if the height does not exceed seventeen (17) feet as defined in section 17.04.550.
  - 2. Accessory Structures with a Footprint from Two Hundred to Six Hundred Square Feet:
    - a. Shall be located behind the front line of the primary structure; and
    - b. Shall comply with the dimensional standards of the zoning designation, including height, setbacks, and lot coverage unless modified pursuant to (c); and
    - c. Side and rear setbacks may be reduced to not less than three (3) feet for one accessory structure and its projections if the height does not exceed seventeen (17) feet as defined in section 17.04.550.
  - 3. Accessory Structures with a Footprint Over Six Hundred Square Feet.
    - a. Shall not exceed more than one accessory structure with a footprint in excess of six hundred (600) square feet per parcel; and
    - b. The parcel shall be in excess of twenty thousand (20,000) square feet; and
    - c. The footprint shall not exceed the footprint of the primary structure; and
    - d. Shall not exceed eight hundred square feet (800); and
    - e. Shall not exceed the height of the primary structure; and
    - f. Shall be located behind the front line of the primary structure; and
    - g. Shall comply with the dimensional standards of the zoning designation including height, setbacks, and lot coverage.
  - 4. Prohibited:
    - a. Cargo containers
    - b. Membrane and fabric covered storage areas visible from the adjacent right-of-way.
    - c. Metal structures within a historic district, or on an individually designated historic property, unless otherwise authorized by OCMC Chapter 17.40.
  - 5. An accessory structure housing a hooved animal shall be located a minimum of twenty-five (25) feet from any property line.
  - 6. Accessory structures constructed prior to January 1, 2017 which are located behind the front building line of the primary structure are exempt from the setback and height requirements in this chapter, except as otherwise limited through an applicable overlay district.

7. Swimming Pools. In-ground and above-ground swimming pools shall be constructed not less than three feet from the side or rear yard lines. Swimming pools shall comply with the front yard setback requirements for the principal structure. A pool must be surrounded by a fence no less than four feet in height or a suitable alternative such as a locked or electric cover, approved by the Building Official.

C. Temporary Structures in the Right-of-Way

This section applies to temporary structures associated with permitted events in the right-of-way. Temporary structures:

1. May be constructed of any building material; and
2. Shall comply with all provisions of the Americans with Disabilities Act; and
3. Shall be exempt from all sections of Chapter 12.04, 12.08, 17.52 and 17.62.

**17.54.010 - Accessory buildings and uses. [Existing Section]**

~~Accessory buildings and uses shall comply with all requirements for the principal use except where specifically modified by this title and shall comply with the following limitations:~~

~~A. Signs. Signs shall be permitted as provided in Chapter 15.28.~~

~~B. Accessory Buildings Dimensional Requirements. The following setbacks and other dimensional requirements shall apply to all accessory buildings and uses:~~

- ~~1. Building Footprint Less than Two Hundred Square Feet. An interior side or rear yard setback behind the front building line may be reduced to three feet for any detached accessory structure with a building footprint which is less than two hundred square feet in area and does not exceed a height of fourteen feet (measured from the average grade on the front of the structure to the midpoint of the roof). No portion of any such structure shall project across a lot line and the accessory structure shall be located behind the front building line of the primary structure. A building permit is required for accessory buildings over ten feet in height (measured from the interior floor to the midpoint of the roof) or over two hundred square feet in size.~~
- ~~2. Building Footprint from Two Hundred to Six Hundred Square Feet. The accessory building must be constructed with the same exterior building materials as that of the primary structure, or an acceptable substitute to be approved by the planning division. The accessory structure shall be located behind the front building line of the primary structure. The interior side and rear yard setbacks may be reduced to three feet for one accessory structure, and its projections, within this category provided the structure and its projections:
  - ~~a. Are detached and separated from other structures by at least three feet;~~
  - ~~b. Do not exceed a height of fourteen feet;~~~~
- ~~3. Building Footprint Over Six Hundred Square Feet. One accessory structure with a building footprint in excess of six hundred square feet may be approved by the planning division. An accessory structure footprint in excess of six hundred square feet must meet the setback requirements of the district in which it is located, and must also meet the following provisions:
  - ~~a. The accessory building must be compatible with the primary structure and constructed with the same exterior building materials as that of the primary structure, or an acceptable substitute to be approved by the planning division.~~
  - ~~b. The lot must be in excess of twenty thousand square feet.~~~~

- c. ~~The building footprint of the accessory structure shall not exceed the building footprint of the primary structure. In no case may the accessory building footprint exceed eight hundred square feet.~~
- d. ~~The accessory structure shall not exceed the height of the primary structure and shall be located behind the front building line of the primary structure.~~
- 4. ~~Membrane or Fabric Covered Storage Area. All membrane and fabric structures:~~
  - a. ~~Shall be located behind the front building line of the primary structure.~~
  - b. ~~Shall not be visible from the abutting right-of-way when viewed at pedestrian level.~~
  - c. ~~Exceptions to these standards may be made by the community development director for temporary storage of materials as long as the membrane or fabric covered storage area is removed within ten days, is not erected for more than twenty days in one calendar year and is not seen as a nuisance to the city.~~
  - d. ~~This section shall be effective on January 1, 2011. This section shall apply to all membrane or fabric covered storage areas in place before, on, or after the effective date of this section.~~
  - e. ~~This prohibition does not apply to membrane covered areas displayed for garden or other active outdoor uses.~~
- C. ~~Private Stable. A private stable may be permitted on a lot having a minimum area of twenty thousand square feet. The capacity of a stable shall not exceed one horse or other domestic hoofed animal for each twenty thousand square feet of lot area. A stable shall be located not less than twenty-five feet from any street line.~~
- D. ~~Swimming Pools. In-ground and above-ground swimming pools shall be constructed not less than three feet from the side or rear yard lines. Swimming pools shall comply with the front yard requirement for the principal building. A pool must be surrounded by a fence no less than four feet in height or a suitable alternative such as a locked or electric cover, approved by the building official.~~

#### **17.54.060 – Seasonal sales. [Delete Existing Section]**

The following standards shall apply to seasonal outdoor sales which are limited to:

- A. ~~Fireworks Sales. The annual season for fireworks sales shall commence no sooner than June 23 and continue no longer than July 5. A business license shall be required pursuant to Title 5 of this code.~~
  - B. ~~Christmas Tree and Wreath Sales. The annual season for Christmas tree and wreath sales shall commence no sooner than the day after Thanksgiving and shall continue no later than December 26.~~
- ~~A business license shall be required pursuant to Title 5 of this code.~~

### **The Following Amendment Applies to Hooved Animals**

#### **6.07 Hooved Animals [New Chapter - Relocated from OCMC Chapter 17.54.010.C]**

##### **6.07.030 – Hooved Animals**

One horse or other domestic hoofed animal is permitted for each twenty thousand square feet of lot area and in compliance with Chapter 17.54.010 and all other the requirements of the Oregon City Municipal Code.

## **The Following Amendments Apply to Temporary Structures in Commercial, Industrial, Mixed Use, Multi-Family, and Institutional Districts**

### **17.62.035 - Minor site plan and design review. [Amend Existing Section]**

This section provides for a minor site plan and design review process. Minor Site Plan Review is a Type I or Type II decision, as described in OCMC Section 17.62.035(A), subject to administrative proceedings described in OCMC Section 17.50 and may be utilized as the appropriate review process only when authorized by the community development director. The purpose of this type of review is to expedite design review standards for uses and activities that require only a minimal amount of review, typical of minor modifications and/or changes to existing uses or buildings.

#### **A. Type I Minor Site Plan and Design Review.**

1. Applicability. Type I applications involve no discretion. The Type I process is not applicable for:
  - a. Any activity which is included with or initiates actions that require Type II-IV review.
  - b. Any use which is not permitted outright, unless otherwise noted.
  - c. Any proposal in which nonconforming upgrades are required under Chapter 17.58.
  - d. Any proposal in which modifications are proposed under Section 17.62.015.
2. The following projects may be processed as a Type I application.
  - a. Addition or removal of up to two hundred square feet to a commercial, institutional, or multifamily structure in which no increases are required to off-street parking. This includes a new ancillary structure, addition to an existing structure, or new interior space (excluding new drive thru). Increases of more than two hundred square feet in a twelve-month period shall be processed as Type II.
  - b. Addition or removal of up to one thousand square feet to an industrial use in which no increases are required to off-street parking. This includes a new ancillary structure, addition to an existing structure, or new interior space (excluding ancillary retail and office). Increases of more than one thousand square feet in a twelve-month period shall be processed as Type II.
  - c. Temporary Structures, excluding mobile vendors.
  - d. Removal, replacement or addition of awnings, or architectural projections to existing structures.
  - e. Addition, modification, or relocation of refuse enclosure.
  - f. Changes to amount, location, or design of bicycle parking.
  - g. Installation of mechanical equipment.
  - h. Repaving of previously approved parking lots with no change to striping.
  - i. Replacement of exterior building materials.
  - j. Addition of windows and doors, relocation of windows and doors in which transparency levels remain unchanged, or removal of windows and doors provided minimum transparency requirements are still met.
  - k. Addition or alteration of parapets or rooflines.
  - l. Modification of building entrances.
  - m. Addition to or alteration of a legal nonconforming single or two-family dwelling.
  - n. Change to parking lot circulation or layout, excluding driveway modifications.
  - o. Removal or relocation of vehicle parking stalls provided total parking remains between approved minimum and maximum with no new reductions other than through the downtown parking district.
  - p. Adoption of shared parking agreements.

- ~~qn.~~ Changes to landscaping that do not require stormwater quality and quantity treatment under OCMC Chapter 13.12.
- ~~re.~~ New or changes to existing pedestrian accessways, walkways or plazas.
- ~~sq.~~ Installation of or alterations to ADA accessibility site elements.
- ~~tf.~~ Modification of a fence, hedge, or wall, or addition of a fence, hedge or wall at least twenty feet away from a public right-of-way.
- ~~us.~~ Addition of or alterations to outdoor lighting.
- 3. Submittal requirements. A Type I application shall include:
  - a. A narrative describing the project.
  - b. Site plan drawings showing existing conditions/uses and proposed conditions/uses.
  - c. Architectural drawings, including building elevations and envelopes, if architectural work is proposed.
  - d. A completed application form.
  - e. Any other information determined necessary by the Community Development Director.
- B. Type II Minor Site Plan and Design Review.
  - 1. Type II Minor site plan and design review applies to the following uses and activities unless those uses and activities qualify for Type I review per Section 17.62.035(A):
    - a. Modification of an office, commercial, industrial, institutional, public or multi-family structure for the purpose of enhancing the aesthetics of the building and not increasing the interior usable space (for example covered walkways or entryways, addition of unoccupied features such as clock tower, etc.).
    - b. Modification to parking lot layout and landscaping, or the addition of up to five parking spaces.
    - c. A maximum addition of up to one thousand square feet to a commercial, office, institutional, public, multi-family, or industrial building provided that the addition is not more than thirty-five percent of the original building square footage.
    - d. Other land uses and activities may be added if the community development director makes written findings that the activity/use will not increase off-site impacts and is consistent with the type and/or scale of activities/uses listed above.
  - 2. Application. The application for the Type II minor site plan and design review shall contain the following elements:
    - a. The submittal requirements of Chapter 17.50.
    - b. A narrative explaining all aspects of the proposal in detail and addressing each of the criteria listed in Section 17.62.035(C) below.
    - c. Site plan drawings showing existing conditions/uses and proposed conditions/uses.
    - d. Architectural drawings, including building elevations and envelopes, if architectural work is proposed.
    - e. Additional submittal material may be required by the community development director on a case-by-case basis.
  - 3. Development Standards for Type II Minor Site Plan and Design Review.
    - a. All development shall comply with Section 17.62.050(1—7 and 8—15 and 20—22) when deemed applicable by the community development director. Other sections may apply, as directed by the community development director when applicable, in order to show compliance with this chapter, such as the commercial and institutional standards of Section 17.62.055.

### **17.62.050.A.23 Temporary Structures [New Section]**

Temporary structures are permitted pursuant to the following standards:

- A. For Structures up to 200 Square Feet:
  - a. Shall not be on a property for more than three (3) consecutive days; and
  - b. Shall not be on a property more than six (6) times per year; and
  - c. Shall comply with the dimensional standards of the zoning designation; and
  - d. Shall be sited so as to leave the minimum number of parking spaces for the primary uses as required by OCMC 17.52 or as otherwise specified in a land use approval;
  - e. Shall not disturb ingress or egress to the site; and
  - f. Shall be exempt from all sections of Chapter 12.04, 12.08, 17.52 and 17.62 except 17.62.050.A.23, 17.62.050.A.21.
- B. Temporary structures larger than 200 square feet may be permitted up to two (2) times per year; and
  - a. Structure larger than 200 square feet up to 800 Square Feet
    - i. Shall not be on a property for more than thirty (30) consecutive days;
    - ii. Shall comply with the dimensional standards of the zoning designation;
    - iii. Shall be sited so as to leave the minimum number of parking spaces for the primary uses as required by OCMC 17.52 or as otherwise specified in a land use approval;
    - iv. Shall not disturb ingress or egress to the site; and
    - v. Shall be exempt from all sections of Chapter 12.04, 12.08, 17.52 and 17.62 except 17.62.050.A.23, 17.62.050.A.21.
  - b. Structures Larger Than 800 Square Feet
    - i. Shall not be on a property for more than seven (7) consecutive days;
    - ii. Shall comply with the dimensional standards of the zoning designation;
    - iii. Shall be sited so as to leave the minimum number of parking spaces for the primary uses as required by OCMC 17.52 or as otherwise specified in a land use approval;
    - iv. Shall not disturb ingress or egress to the site; and
    - v. Shall be exempt from all sections of Chapter 12.04, 12.08, 17.52 and 17.62 except 17.62.050.A.23, 17.62.050.A.21.
- C. Government owned properties are exempt from all sections of Chapter 12.04, 12.08, 17.52 and 17.62 except 17.62.050.A.23.C, 17.62.050.A.21 and the dimensional standards of the zoning designation.

### **17.62.050.A.21 Building Materials [Amend Existing Section]**

- a. Preferred building materials. Building exteriors shall be constructed from high quality, durable materials. Preferred exterior building materials that reflect the city's desired traditional character are as follows:
  - i. Brick.
  - ii. Basalt stone or basalt veneer.
  - iii. Narrow horizontal wood or composite siding (generally five inches wide or less); wider siding will be considered where there is a historic precedent.
  - iv. Board and baton siding.
    - a. Other materials subject to approval by the community development director.
  - vi. Plywood with battens or fiber/composite panels with concealed fasteners and contiguous aluminum sections at each joint that are either horizontally or vertically aligned.
  - vii. Stucco shall be trimmed in wood, masonry, or other approved materials and shall be sheltered from extreme weather by roof overhangs or other methods.

- b. Prohibited materials. The following materials shall be prohibited in visible locations unless an exception is granted by the community development director based on the integration of the material into the overall design of the structure.
- i. Vinyl or plywood siding (including T-111 or similar plywood).
  - ii. Glass block or highly tinted, reflected, translucent or mirrored glass (except stained glass) as more than ten percent of the building facade.
  - iii. Corrugated fiberglass.
  - iv. Chain link fencing (except for temporary purposes such as a construction site or as a gate for a refuse enclosure).
  - v. Crushed colored rock/crushed tumbled glass.
  - vi. Non-corrugated and highly reflective sheet metal.
  - vii. Tarps, except for the protection of outside storage.
- c. Special material standards: The following materials are allowed if they comply with the requirements found below:
1. Concrete block. When used for the front façade of any building, concrete blocks shall be split, rock- or ground-faced and shall not be the prominent material of the elevation. Plain concrete block or plain concrete may be used as foundation material if the foundation material is not revealed more than 3 feet above the finished grade level adjacent to the foundation wall.
  2. Metal siding. Metal siding shall have visible corner moldings and trim and incorporate masonry or other similar durable/permanent material near the ground level (first two feet above ground level) except when used for a temporary structure.
  3. Exterior Insulation and Finish System (EIFS) and similar troweled finishes shall be trimmed in wood, masonry, or other approved materials and shall be sheltered from extreme weather by roof overhangs or other methods.
  4. Building surfaces shall be maintained in a clean condition and painted surfaces shall be maintained to prevent or repair peeling, blistered or cracking paint.
  5. Membrane or fabric covered storage areas are permitted as temporary structures, excluding the use of tarps.





# City of Oregon City

625 Center Street  
Oregon City, OR 97045  
503-657-0891

## Staff Report

File Number: 17-332

**Agenda Date:** 6/7/2017

**Status:** Consent Agenda

**To:** City Commission

**Agenda #:** 8a.

**From:** City Recorder Kattie Riggs

**File Type:** Contract

### **SUBJECT:**

Personal Services Agreement with the Friends of Willamette Falls Media Center for a Community Media Center for Production and Channel Management

### **RECOMMENDED ACTION (Motion):**

Staff recommends approval of the Personal Services Agreement for a two-year period in the amount of \$149,900.

### **BACKGROUND:**

In April of this year the City solicited quotes for cable services and received two responses, but only one met all the necessary requirements. This was the quote from Friends of Willamette Falls Media Center (dba Willamette Falls Media Center (WFMC)). Willamette Falls Media Center was able to meet the requirements of the scope of work and more, including studio access for the public, cable broadcast of City meetings, readerboard services, government channel access, production services, and maintenance and consultation. The contract provides for all these services, plus videography of all City board and committee meetings and cable broadcasting of the Citizen Involvement Council, City Commission Work Sessions, and Urban Renewal Commission in addition to the City Commission and Planning Commission regular meetings.

Staff has been happy with Willamette Falls Media Center and asks the Commission to approve this new agreement and authorize the City Manager to execute the contract.

### **BUDGET IMPACT:**

Amount: \$149,900, \$74,950/per year

FY(s): 2017- 2019

Funding Source: General Fund

CITY OF OREGON CITY  
PERSONAL SERVICES AGREEMENT

This PERSONAL SERVICES AGREEMENT (“Agreement”) is entered into between the CITY OF OREGON CITY a municipal corporation of the State of Oregon (“City”), and Friends of Willamette Falls Media Center, an Oregon non-profit entity (“Consultant”) for a Community Media Center for Production and Channel Management.

RECITALS

A. City requires services that Consultant is capable of providing under the terms and conditions hereinafter described.

B. Consultant is able and prepared to provide such services as City requires under the terms and conditions hereinafter described.

The parties agree as follows:

AGREEMENT

1. Term. The term of this Agreement shall be from July 1, 2017 until June 30, 2019, unless sooner terminated pursuant to provisions set forth below. However, such expiration shall not extinguish or prejudice City’s right to enforce this Agreement with respect to (i) breach of any warranty; or (ii) any default or defect in Consultant’s performance that has not been cured.

2. Compensation. City agrees to pay Consultant on a time-and-materials basis for the services required. Total compensation, including reimbursement for expenses incurred, shall not exceed \$149,900.00.

3. Scope of Services. Consultant’s services under this Agreement shall consist of services as detailed in Exhibit A, attached hereto and by this reference incorporated herein.

4. Standard Conditions. This Agreement shall include all of the standard conditions as detailed in Exhibit B, attached hereto and by this reference incorporated herein.

5. Integration. This Agreement, along with the description of services to be performed attached as Exhibit A and the Standard Conditions to Oregon City Personal Services Agreement attached as Exhibit B, contain the entire agreement between and among the parties, integrate all the terms and conditions mentioned herein or incidental hereto, and supersede all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

6. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

To the City:

City of Oregon City  
PO Box 3040  
625 Center Street  
Oregon City, OR 97045  
Attention: City Recorder

To Consultant:

Friends of Willamette Falls Media Center  
1101 Jackson Street  
Oregon City, OR 97045  
Attention: Melody Ashford, Executive Director

Consultant shall be responsible for providing the City with a current address. Either party may change the address set forth above for purposes of notices under this Agreement by providing notice to the other party in the manner set forth above.

7. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF OREGON CITY

FRIENDS OF WILLAMETTE FALLS MEDIA  
CENTER

By: \_\_\_\_\_  
Anthony J. Konkol, III  
Title: City Manager

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

DATED: \_\_\_\_\_, 20\_\_.

DATED: \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Kattie Riggs  
Title: City Recorder

APPROVED AS TO LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
City Attorney



APR 18 2017  
CITY RECORDER  
CITY OF OREGON CITY, OR

## Proposal for City of Oregon City Public/Government Access Services FY 2017-2019

### **Description of Organization**

Friends of Willamette Falls Media Center Inc. /dba Willamette Falls Media Center (WFMC) located at 1101 Jackson Street, Oregon City, OR 97045 is a 501 (c) (3), EIN 80-0762454 governed by a Board of Directors. The WFMC governing board creates policy, provides a budget for facility operations, and is composed of a minimum of five and maximum of fifteen citizens from the community. Detailed information regarding the selection, role and scope of authority of the Board of Directors can be found in the By-Laws of the organization.

Willamette Falls Media Center currently manages five community Public, Education and Government (PEG) channels for Comcast, which include Milwaukie, Oregon City, Wilsonville and Unincorporated Clackamas County, as well as contributes content metro-wide on the Cable Access Network (CAN) channel. WFMC is also the head-end for CenturyLink. Additionally, staff produces media content, provides consultation and technical support, and is proficient in working with all experience levels in media production. WFMC provides full-scale video production services, studio facilities, video equipment checkout, video production education, digital media training, and access to the community cable channel's playback system. Any resident in a contracted service area is welcome to participate in the Core Media Production Classes at no out of pocket cost. WFMC is working with School Districts throughout Clackamas County, to develop and expand media education programs. WFMC provides the community with access to opportunities in communication media, which supports the sharing of ideas and facilitates solutions to strengthen and support the educational, cultural and civic fabric of Clackamas County.

### **System Concept and Solution**

#### **PUBLIC ACCESS**

1. WFMC will provide Oregon City residents with full access to the WFMC studio to produce and edit TV programs for showing on the public access channel. WFMC maintains production equipment and scheduling of equipment rentals for use by residents.
2. All programs produced by Oregon City residents will be cablecast on public access channels.
3. WFMC professional staff will assist with production, editing and cablecasting of reader board notices submitted by City residents and city staff.

4. Residents will be provided with full access to education and training for media production classes.
5. WPMC will maintain accessibility of services to Oregon City residents by:
  - Scheduling, monitoring, and maintaining editing and production facilities
  - Monitoring equipment and performing maintenance as needed
  - Managing and coordinating cablecast of programming on the Public Access channel, according to an established cablecast schedule

#### **GOVERNMENT ACCESS**

1. WPMC can and will provide the City with a videographer to operate the City-owned on-site audio/video equipment located at City Hall, 625 Center Street for two (2) Commission meetings, two (2) Planning Commission meetings, and one (1) Commission Work Session each month, for a total of sixty (60) meetings annually. The City will be provided with a videographer, as needed on call, for any additional meetings, which will be contracted according to rate schedule A.
2. In the event a meeting is cancelled, the City must notify WPMC of the cancellation 24 hours prior to the start of the meeting. If a 24 hour notification is not, given the City will incur a charge of \$100.00.
3. WPMC will produce audio/video media copies of meetings as needed.
4. WPMC will create community video boards with the information and event announcements provided by the city.
5. WPMC will monitor audio and video output of each meeting cablecast on the government channel to ensure the highest quality within equipment capacity.
6. WPMC can and will coordinate, develop, maintain, and manage the programming and playback of an established schedule for all programs and meetings.
7. As a Non-profit entity, WPMC has the benefit of providing cost effective strategies for your City. WPMC staff will work with City staff and the City's cable provider to enhance audio and video quality of all cablecasts and will coordinate selection and purchase of appropriate equipment.
8. WPMC will monitor City-owned equipment and perform basic maintenance as needed. (ie. On-site trouble shooting and assessment. Minor adjustments and repair of cables, cords or connectors replacement.) Materials will be billed at cost. Other repairs will be charged at an additional rate, Schedule B, plus vendor fee.
9. WPMC will provide media transport, as necessary.
10. WPMC can provide staff on call (by phone) to trouble shoot playback errors, within one hour of when they are identified.
11. Videographers will arrive on site no less than one (1) hour prior to the meeting start time.



**Program Management Structure**

WFMC Executive Director will be the direct contact to the City of Oregon City. The Executive Director will assign appropriate WFMC staff for all projects. Assigned WFMC staff will provide lead on the project with ongoing communications with WFMC Executive Director. Any changes in scope of project will be agreed upon and approved between WFMC Executive Director and designated City of Oregon City Staff. WFMC's professional staff is cross trained with similar skills in all aspects of media production.

Staffing will be included in the contract base rates, unless otherwise stated.

**PUBLIC ACCESS OPERATIONS**

- Executive Director: Melody Ashford.
- Executive Assistant: Shelly Ostrowski
- Instruction/Studio Operation: Primary - Steve Tarantola; Support Staff - Steve Johnson, and Melody Ashford.
- IT/Playback Operations and Community Boards: Primary - Joshua Reynolds; Support Staff - Steve Tarantola, Steve Johnson, and Melody Ashford.
- Consultations, Facility Engineering, and Maintenance/Upgrades: Primary - Steve Johnson; Support Staff - Melody Ashford and Steve Tarantola.
- Content Delivery Specialists: Steve Tarantola.
- Production and Outreach Projects: Melody Ashford, Steve Johnson, and Steve Tarantola.
- Finance Billing/Invoicing: Primary - Stephanie Head; Support Staff - Melody Ashford, Friends of WFMC Board, and contracted CPA services.

**GOVERNMENT ACCESS OPERATIONS**

- Government Channel and Site Management: Melody Ashford, Executive Director.
- City Government Meetings: Professional videographer staff as assigned
- Consultations and Maintenance: Melody Ashford, Steve Johnson and contracted services as needed
- Playback Operations and Community Boards: Joshua Reynolds and Melody Ashford.
- Additional Government Videography, Productions Services and Training: Melody Ashford, Steve Tarantola, Steve Johnson, Josh Reynolds.

**Prior Experience**

- Executive Director: Melody Ashford, 31 years in media production and 30 of those years in community media services and 27 years' operating an independent production company.
- Executive Assistant: Shelly Ostrowski, 20 years' of general office and customer service. Major in Business Administration and Marketing.

- Engineering: Steve Johnson, A Degree in Television Technology, 43 years in technical A/V services and engineering. Worked for WFTV/WFMC for 35 yrs
- Playback Operations/IT/Website: Josh Reynolds, Associate Degree in Computer Applications; 6 year background in Radio broadcasting; 2 years' experience in Playback Operations and professional-level audio and video recording equipment; Skilled in computer hardware and professional-level media production software.
- Location Videographer: Rene Hinneberg, Multi-Media Producer, over 25 years of professional production experience. Primary videographer for WFMC assigned to City of Oregon City. Vast background in all phases of production and familiar with Granicus.
- Studio Specialist: Steve Tarantola, A graduate of Florida State University B.S. in Media Production. 26 years professional field production experience. Digital video post-production, editing and instructor in the field of digital media and television.
- Bookkeeper/Administrative Assistant: Stephanie Head, 26 years with bookkeeping experience and six of those years as a full charge bookkeeper for a non-profit.

#### **WFMC Board of Directors**

James Kunze – President  
Dave Hedges – Vice-Chair/Treasurer  
Jessica Morris – Secretary  
Ken Pryor – Board Member  
Richard Marlow – Board Member

Karen Sorbel – Board Member  
Kerry Brown – Board Member  
Jordan Morris – Board Member  
Sherry Morisch – Board Member

#### **Authorized Negotiator**

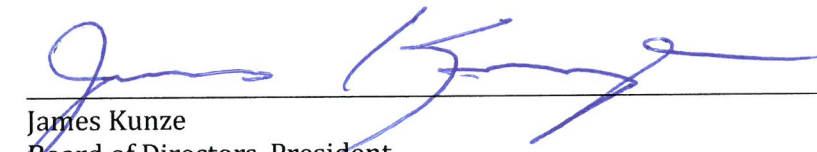
Jim Kunze, Chair – WFMC Board of Directors, President  
1101 Jackson Street, Oregon City, OR 97045  
Cell Phone: 503-422-7128  
Email: Melody@wfmstudios.org

**Proposed Budget**

<b>Fiscal Year 2017/18</b>		
PROGRAM AREA-Schedule A	MONTHLY AMOUNT	BUDGET AMOUNT
Public Access Operation	\$2,709.63	\$32,516.00
Government Access Operation	\$2,709.63	\$32,516.00
	\$5,419.25	<b>\$65,032.00</b>

<b>Fiscal Year 2018/19</b>		
PROGRAM AREA-Schedule A	MONTHLY AMOUNT	BUDGET AMOUNT
Public Access Operation	\$2,805.90	\$33,671.00
Government Access Operation	\$2,805.90	\$33,671.00
	\$5,611.80	<b>\$67,342.00</b>

Proposal for City of Oregon City Public/Government Access Services submitted on the   14   day of  
  April  , 2017 by:

  
 \_\_\_\_\_  
 James Kunze  
 Board of Directors, President





### **RATE SUMMARY SHEET FY 17/18 EST**

Public Channel and Operations Management	\$32,516
Government Channel and Operations Management	\$32,516
Population-Based Rate for Municipalities (\$5,500 PER 10,000)	
Oregon City based on 34,240 population (Certified Estimate US Census 2016)	\$18,832
Contract 5% increase is associated with facilities overall cost ranging from 3% for lease up to 10% for other increasing operations costs to support facility and employees. The 5% determination by WFMC board is determined to be equitable for all service contracts.	\$2,200

#### **Additional Government Meetings**

Additional Meeting - 12 meetings per year – Annual Rate (included up to 6-hour on site)	\$2,700
Half-Day Field Production Rate (productions requiring remote camera)	\$275
Full-Day Field Production Rate (productions requiring remote camera)	\$450

### **RATE SUMMARY SHEET FY 18/19 EST**

Public Basic Channel Management (4) Meetings and Management	\$33,671
Government Basic Channel Management and complete facility	\$33,671
Population-Based Rate for Municipalities (\$5,500 PER 10,000)	
Oregon City based on 34,240 population (Certified Estimate US Census 2016)	\$18,832
Contract 5% increase is associated with facilities overall cost ranging from 3% for lease up to 10% for other increasing operations costs to support facility and employees. The 5% determination by WFMC board is determined to be equitable for all service contracts.	\$2,310

#### **Additional Government Meetings**

Additional Meeting - 12 meetings per year – Annual Rate (included up to 6-hour on site)	\$2,700
Half-Day Field Production Rate (productions requiring remote camera)	\$275
Full-Day Field Production Rate (productions requiring remote camera)	\$450

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

1. Contractor Identification. Contractor shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Contractor's social security number, as City deems applicable.

2. Payment.

(a) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers.

(b) City agrees to pay Contractor within thirty (30) days after receipt of Contractor's itemized statement. Amounts disputed by City may be withheld pending settlement.

(c) City certifies that sufficient funds are available and authorized for expenditure to finance the cost of the services to be provided pursuant to this Agreement.

(d) City shall not pay any amount in excess of the compensation amounts set forth above, nor shall City pay Contractor any fees or costs that City reasonably disputes.

3. Independent Contractor Status.

(a) Contractor is an independent contractor and is free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results.

(b) Contractor represents that it is customarily engaged in an independently established business and is licensed under ORS chapter 671 or 701, if the services provided require such a license. Contractor maintains a business location that is separate from the offices of the City and bears the risk of loss related to the business as demonstrated by the fixed price nature of the contract, requirement to fix defective work, warranties provided and indemnification and insurance provisions of this Agreement. Contractor provides services for two or more persons within a 12 month period or routinely engages in advertising, solicitation or other marketing efforts. Contractor makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and

Contractor has the authority to hire or fire persons to provide or assist in providing the services required under this Agreement.

(c) Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law (including applicable City or Metro business licenses as per Oregon City Municipal Code Chapter 5.04). Contractor shall furnish the tools or equipment necessary for the contracted labor or services. Contractor agrees and certifies that:

(d) Contractor is not eligible for any federal social security or unemployment insurance payments. Contractor is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Contractor under this Agreement.

(e) Contractor agrees and certifies that it is licensed to do business in the state of Oregon and that, if Contractor is a corporation, it is in good standing within the state of Oregon.

4. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term by mutual written consent of the parties or by the City upon ten (10) days written notice to the Contractor, delivered by certified mail or in person.

(b) Upon receipt of notice of early termination, Contractor shall immediately cease work and submit a final statement of services for all services performed and expenses incurred since the date of the last statement of services.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of City provided in this Agreement and relating to defaults by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

5. No Third-Party Beneficiaries. City and

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

### 6. Payment of Laborers; Payment of Taxes.

#### (a) Contractor shall:

(i) Make payment promptly, as due, to all persons supplying to Contractor labor and materials for the prosecution of the services to be provided pursuant to this Agreement.

(ii) Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.

(iii) Not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished.

(iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Contractor under this Agreement and, unless Contractor is subject to back-up withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligation.

(v) Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 653.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime.

(b) If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Agreement as such claim becomes due, City may pay such claim to the person furnishing the labor or services and shall charge the amount of the payment against funds due or to become due Contractor by reason of this Agreement.

(c) The payment of a claim in this manner shall not relieve Contractor or Contractor's surety

from obligation with respect to any unpaid claims.

(d) Contractor and subcontractors, if any, are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

### 7. SubContractors and Assignment.

Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor.

8. Access to Records. City shall have access to all books, documents, papers and records of Contractor that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

9. Ownership of Work Product; License. All work products of Contractor that result from this Agreement (the "Work Products") are the exclusive property of City. In addition, if any of the Work Products contain intellectual property of Contractor that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Contractor hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Contractor under this Agreement. The parties expressly agree that all works produced (including, but not limited to, any taped or recorded items) pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Contractor shall not publish, republish, display or otherwise use any work or Work Products resulting from this Agreement without the prior written agreement of City.

### 10. Compliance With Applicable Law.

Contractor shall comply with all federal, state, and local laws and ordinances applicable to the services

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230 and 279B.270. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

11. Professional Standards. Contractor shall be responsible, to the level of competency presently maintained by others practicing in the same type of services in City's community, for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this authorization.

12. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

13. Indemnity and Insurance.

(a) Indemnity. Contractor acknowledges responsibility for liability arising out of Contractor's negligent performance of this Agreement and shall hold City, its officers, agents, Contractors, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim caused or alleged to be caused by the negligent acts, omissions, activities or services by Contractor, or the agents, Contractors or employees of Contractor provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Contractor certifies that Contractor has qualified for workers' compensation as required by the state of Oregon. Contractor shall provide the Owner, within ten (10) days after execution of this Agreement, a certificate of insurance evidencing coverage of all subject workers under Oregon's workers' compensation statutes. The insurance certificate and policy shall indicate that the policy

shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. All agents or Contractors of Contractor shall maintain such insurance.

(c) Comprehensive, General, and Automobile Insurance. Contractor shall maintain comprehensive general and automobile liability insurance for protection of Contractor and City and for their directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, including loss of use, and occurring as a result of, or in any way related to, Contractor's operation, each in an amount not less than \$1,000,000 combined, single-limit, per-occurrence/annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Contractor.

14. Legal Expenses. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

15. Severability. The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

16. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

17. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

18. Hierarchy. The conditions contained in this document are applicable to every Personal

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

Services Agreement entered into by the City of Oregon City in the absence of contrary provisions. To the extent there is a conflict, the terms of the Personal Services Agreement will control over the terms of the standard conditions. To the extent there is a conflict between the terms of the standard conditions and any other document, including the scope of services, the terms of the standard conditions shall control those other terms.

19. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the state of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

20. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. Nonwaiver. The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

22. Information and Reports. Contractor shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Contractor shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but shall remain with Contractor. Copies as requested shall be provided free of cost to City.

23. City's Responsibilities. City shall furnish Contractor with all available necessary information, data, and materials pertinent to the execution of this Agreement. City shall cooperate with Contractor in carrying out the work herein and shall provide adequate staff for liaison with Contractor.

### 24. Arbitration.

All disputes arising out of or under this Agreement shall be timely submitted to nonbinding mediation prior to commencement of any other legal proceedings. The subsequent measures apply if disputes cannot be settled in this manner.

(a) Any dispute arising out of or under this Agreement shall be determined by binding arbitration.

(b) The party desiring such arbitration shall give written notice to that effect to the other party and shall in such notice appoint a disinterested person of recognized competence in the field as arbitrator on its behalf. Within fifteen (15) days thereafter, the other party may, by written notice to the original party, appoint a second disinterested person of recognized competence as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third disinterested person of recognized competence, and the three arbitrators shall, as promptly as possible, determine such matter, provided, however, that:

(i) If the second arbitrator is not appointed as described above, then the first arbitrator shall proceed to determine such matter; and

(ii) If the two arbitrators appointed by the parties are unable to agree, within fifteen (15) days after the second arbitrator is appointed, on the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties and, if the parties fail to agree on the selection of the third arbitrator within fifteen (15) days after the arbitrators appointed by the parties give notice, then, within ten (10) days thereafter, either of the parties, on written notice to the other party, may request such appointment by the presiding judge of the Clackamas County Circuit Court.

(c) Each party shall each be entitled to present

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

evidence and argument to the arbitrators. The determination of the majority of the arbitrators or the sole arbitrator, as the case may be, shall be conclusive on the parties, and judgment on the same may be entered in any court having jurisdiction over the parties. The arbitrators or the sole arbitrator, as the case may be, shall give written notice to the parties, stating the arbitration determination, and shall furnish to each party a signed copy of such determination. Arbitration proceedings shall be conducted pursuant to ORS 33.210 et seq. and the rules of the American Arbitration Association, except as provided otherwise.

(d) Each party shall pay the fees and expenses of the arbitrator appointed by such party and one-half of the fees and expenses of the third arbitrator, if any.

25. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

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# CITY OF OREGON CITY

No. \_\_\_\_\_

P. O. Box 3040  
Oregon City, Oregon 97045-0304  
(503) 657-0891 FAX (503) 657-3339  
TOLL FREE (888) 873-1676

**2011**

## APPLICATION FOR BUSINESS LICENSE

RENEWAL ☐NEW ☐OWNERSHIP CHANGE ☐ADDRESS CHANGE ☐NAME CHANGE ☐

BUSINESS	OWNER
Name	Name
Site Address	Driver's License # and State
Mailing Address	Address
City, State, Zip	City, State, Zip
Phone	Phone

### ID NUMBERS/LICENCES

Federal ID No. (EIN)	Metro Contractor's License
4 Digit SIC Code (if known)	State License # (if applicable)

### BUSINESS INFORMATION

Description of Business (give details)				
Business Based in Home	No <input type="checkbox"/>	Yes <input type="checkbox"/>	☞☞☞	If Yes, Home Occupation Form Required (if in City Limits)
Hazardous Materials	No <input type="checkbox"/>	Yes <input type="checkbox"/>	☞☞☞	List
Coin-Op Machines	No <input type="checkbox"/>	Yes <input type="checkbox"/>	☞☞☞	Type # of Machines
Is your business located Oregon City Limits? No <input type="checkbox"/> Yes <input type="checkbox"/>				Total number of persons doing business in Oregon City? ____
Please indicate type of ownership : ☞☞☞☞☞☞☞☞☞☞				Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Non-Profit <input type="checkbox"/> LLC <input type="checkbox"/>
Will you be making any changes to the structure, electrical, plumbing or heating/cooling equipment? No <input type="checkbox"/> Yes <input type="checkbox"/> If yes, what will be changed?				

### SIGNATURE/CONTACT INFORMATION

I CERTIFY THE ABOVE INFORMATION IS CORRECT ☞☞		Applicant's Signature:	
In case of emergency regarding your business, please furnish after hours contact information.			
Name (primary)	Emergency Phone	Name (secondary)	Emergency Phone

### PAYMENT

Credit Card Information (if paying with credit card)	Account Number	Exp. Date	3 Digit CSC (back of card)
		____/____	
	Visa <input type="checkbox"/> M/C <input type="checkbox"/>	Using payment schedule,	FEE \$

**PAYMENTS MUST ACCOMPANY APPLICATION. MAKE CHECKS PAYABLE TO: City of Oregon City**

### OFFICE USE ONLY

Amount Paid	Receipt #	<input type="checkbox"/> Cash <input type="checkbox"/> Check	<input type="checkbox"/> Visa <input type="checkbox"/> Mastercard	Approval No.	Date Paid
Comments		By		Date Issued	License Number

### **WHO NEEDS A BUSINESS LICENSE?**

Oregon City Municipal Code Title 5, Chapter 5.04 requires all businesses conducting business inside the city limits of Oregon City to obtain an Oregon City business license.

### **HOW DO I GET A BUSINESS LICENSE?**

Submit a completed application with the applicable fee:

- In person to the City Finance Department at 625 Center Street;
- By mail to Business Licensing, PO Box 3040, Oregon City, OR 97045; or
- Online at [www.orcity.org](http://www.orcity.org).

Businesses operating in the City must comply with all building, zoning, signage, fire and police requirements. Completion of the application does not imply business license approval. The business may not begin until the business license and all necessary permits, signs and inspections are approved by the City. Home-based businesses located in the City are required to fill out the Home Occupation Worksheet annually.

### **BUSINESS LICENSE RATES**

The cost of the business license is dependent on the location of your business and the number of employees. When figuring the number of employees, include all persons involved in your business including owners, officers, employees and others operating within the City of Oregon City. New businesses that begin after June 30<sup>th</sup> may pay ½ of the annual fee listed below. Please verify your business location as it refers to Oregon City's jurisdictional boundary.

<b><u>NO. OF EMPLOYEES</u></b>	<b><u>INSIDE CITY LIMITS</u></b>	<b><u>OUTSIDE CITY LIMITS</u></b>
1 – 25 persons	\$ 75.00	\$ 112.50
26 – 50 persons	\$ 100.00	\$150.00
51 – 100 persons	\$ 150.00	\$ 225.00
101 or more	\$ 300.00	\$ 450.00

### **QUESTIONS?**

Please contact Esther Beverly at (503) 496-1519 or 625 Center Street during regular business hours with any questions.





# City of Oregon City

625 Center Street  
Oregon City, OR 97045  
503-657-0891

## Staff Report

File Number: 17-331

**Agenda Date:** 6/7/2017

**Status:** Consent Agenda

**To:** City Commission

**Agenda #:** 8b.

**From:** City Recorder Kattie Riggs

**File Type:** Contract

### **SUBJECT:**

First Amendment to Subscription Services Contract with Chaves Consulting for the Provision of Hosted Electronic Records Management System Services (ERMS) and Related Services

### **RECOMMENDED ACTION (Motion):**

Staff recommends approval of the first amendment to the Subscription Services Contract with Chaves Consulting and authorize the City Manager to execute the amendment.

### **BACKGROUND:**

Staff is asking the City Commission to approve an amendment to the Subscription Services Contract with Chaves Consulting to include a new "inquiry only" account offering with a reduced rate option, which was previously unavailable and saves the City money.

Due to the ever-increasing challenge to manage the City's electronic information, the ever-increasing requests for records, and the costs to store and maintain electronic records, the Secretary of State's Archives Division has developed a premium solution through an innovative "Software as a Service" (SaaS) model. Because maintaining electronic records manually is virtually impossible, technology was introduced to help manage information more effectively. Electronic records are difficult to store, organize and search due to the sheer volume of records being created. These problems are growing exponentially without an effective way to mitigate risks due to poor or non-existent electronic records management solutions. Through the efforts of the Oregon Secretary of State's Archives Division, a unique, public-private partnership with Chaves Consulting, Inc., Arikkan, Inc., and Hewlett Packard was established to implement the first statewide, private government cloud electronic records management solution in the country. According to State Archivist, Mary Beth Herkert, Oregon's cloud-based HPERM (Hewlett Packard Enterprise Records Manager) system allows agencies to systematically and routinely manage information from creation until final disposition, while providing better access to this information and potentially reducing the City's legal risk and liability.

The ORMS model is designed to fulfill the cities records management hardware, software, training, and support needs without the requirement of an upfront investment. Hardware, software, and 24/7 helpdesk is provided. The State's Archives Division provides implementation and training to City employees. ORMS offers a low monthly per-user fee based on the total number of users. The State Archives Records Management team currently assists with developing file structures, classifications, and retention schedules in HPERM, and

comes onsite to individually train employees on the step-by-step process of implementing the system. The system provides a 21st Century records management and information center from which the City Commission, the employees, and the public will have access to information 24/7.

Chaves Consulting provides access to and use of the HPERM application, software, data hosting and storage, and helpdesk support services. The facility is located in Baker City, Oregon. The Chaves Consulting provides consulting, implementation, training, and support services related to the subscription services as identified in the Master Services Agreement that was developed by the State of Oregon and Chaves Consulting, on behalf of government agencies who participate. Contractor provides security services as specified in Section 12 of the agreement, including 24/7 response to a security incident; immediate security notification and resolution; provides security fix within 4 hours of City approval; and must pass an audit of services every twelve months. Contractor warrants that if subscription services falls below 97.4% in any month, that the City be entitled to a credit on that month's bill.

The monthly per-user cost includes software, hardware, maintenance, upgrades, 24/7 helpdesk, ongoing training, data storage, no upfront agency costs, Webinars, newsletters, conference calls, and remote access sessions to work with the City on user desktops. The cost per user is reduced as the number of statewide users increases.

HPERM is U.S. Department of Defense certified to provide the highest level of information security, including scheduled and automated destruction of records according to State retention schedules, reducing storage costs and legal risk and liability.

In 2014 the City Commission approved the Subscription Services Contract with Chaves Consulting along with an Intergovernmental Agreement with the Oregon Secretary of State's Archives Division, as described above, for the ERMS software and services. The City is currently implementing HPERM City-wide as part of the City Commission's Goal #4. Chaves Consulting has introduced an additional offering of a "inquiry only" account versus the current two options of a "user" and a "power users." When the original services contract was agreed upon there were only the user and power users options at the same rate of \$37.02/per user per month. This new "inquiry only" account would allow the City to register additional staff with view-only access for those staff that may need to review and retrieve records in the ERMS system, but not enter records into the system. The rate offered for this "inquiry only" account would be \$18.51/per user per month instead of the City registering all employees as regular users no matter if they entered records into the system or not.

Staff is asking the City Commission to approve an amendment to the Subscription Services Contract with Chaves Consulting to include this new "inquiry only" account offering and rate.

**BUDGET IMPACT:**

Amount: \$18.51/per user per month for "inquiry only" and the "user" and "power user" rate remains the same at \$37.02/per user per month; Cost incrementally reduced as more statewide users are added.

FY(s): 2017-19: Remaining unchanged at \$37,760/year (maximum). Contract renewed annually for up to ten years.

Funding Source: General Fund.



**AMENDMENT # 1 TO SUBSCRIPTION SERVICES CONTRACT NUMBER ORMS-0128**


1. This agreement between Chaves Consulting, Inc. ("Contractor") and City of Oregon City ("Authorized Purchaser"), is an amendment to the contract between the Contractor and the Authorized Purchaser entered into on August 7, 2014 (Contract), with a stated effective date of August 6, 2014.
2. This is amendment #1 to the above referenced contract (deleted language has a strike through and the new language is in bold print and underlined):
3. Section 4 of the contract is amended as follows: During the term of this Contract, Authorized Purchaser may add additional Users at any time. The monthly installment fee will be set according to the table in Section 3, **as amended by Amendment #13 to the ORMS Master Service Agreement**, for each additional User commencing on the day the additional Users are specified by Authorized Purchaser. **Additional Users or Additional Inquiry-Only Users may be requested from or by an Authorized Purchaser, via email, to the ORMS helpdesk.**
4. Except as expressly amended above, all other terms and conditions of original contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original contract are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.

**SIGNATURES**

**AUTHORIZEDPURCHASER**

By: \_\_\_\_\_  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

**CONTRACTOR**

By:   
\_\_\_\_\_  
President  
Title  
05/01/2017  
Date

**EXHIBIT D**  
**SUBSCRIPTION SERVICES CONTRACT**

This Subscription Services Contract Number ORMS – 0128 (“Contract”) is effective August 6, 2014 (“Contract Effective Date”) between Chaves Consulting, Inc. (“Contractor”) and **City of Oregon City, Oregon** (“Authorized Purchaser”).

THIS CONTRACT IS ENTERED INTO PURSUANT TO MASTER SOFTWARE AS A SERVICE AGREEMENT #0486 (the “MSA”) AND IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH THEREIN. THE TERMS AND CONDITIONS OF THE MSA APPLY TO THIS CONTRACT AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED. A COPY OF THE MSA IS ATTACHED TO AND INCORPORATED HEREIN AS ATTACHMENT 1.

**Authorized Purchaser Contact information:**

**Agency:** City of Oregon City  
**Contact Name:** David Frasher, City Manager  
**Address:** PO Box 3040  
625 Center Street, Oregon City, OR 97045  
**Phone:** 503-657-0891  
**Email Address:** citymanager@orcify.org

**Invoices shall be sent to:**

**Agency:** City of Oregon City  
**Contact Name:** Nancy Ide until 12/31/14, then successor  
**Address:** Same as above  
  
**Phone:** 503-496-1505  
**Email Address:** recorder@orcify.org

**1. Subscription Services**

The Contractor will provide to the Authorized Purchaser all required services listed in Exhibit B which includes: access to and use of the HP TRIM application, software and data hosting and storage, and helpdesk support services. The State Archives Division will provide the training for using HP TRIM. The Contractor may provide training to other software integrations.

Services shall be deemed to commence on the date that: (1) the Authorized Purchaser has access either to the ORMS HP TRIM production or quality assurance (QA) environment, to data hosting, storage and helpdesk support; and (2) the Authorized Purchaser's initial Users have been provided Phase 1 initial implementation training as specified in the ORMS Training Plan.

## **2. Role of State Archives Division**

The State Archives Division will work with Authorized Purchaser in order to set milestones such as the number of initial Users, projected total end users upon full Authorized Purchaser implementation, and due date for full implementation. The milestones agreed upon by the Authorized Purchaser with the assistance of the State Archives Division shall be incorporated as Attachment #2 to this Contract.

The projected full implementation date shall be confirmed in writing by Authorized Purchaser and by representatives of the State Archives Division and Contractor within 5 business days of the kickoff meeting and incorporated in Attachment #2.

Contractor shall, during or before the initial implementation phase, develop and provide to Authorized Purchaser an Acceptance Test Implementation Survey that is reasonably constructed to test the ability of the Subscription Services and associated software applications, as implemented by Contractor, to produce the results and other Deliverables specified in this Contract.

In the event that Authorized Purchaser is not able to meet a specific milestone date, the Authorized Purchaser shall notify both the State Archives Division and Contractor.

The notification must be given in writing before the proposed milestone date stating the reason the date cannot be met and Authorized Purchaser will not be subject to any penalty charges.

## **3. Subscription Fee and Payment Schedule**

Authorized Purchaser shall pay Contractor a monthly fee based on the number of Users for Authorized Purchaser. The rate per User per month is specified in the following table:

<b>Number of Users</b>	<b>Cost per Month per User</b>	<b>Monthly Rebate Per User</b>
2,000	\$37.02	\$8.76
3,000	\$37.02	\$8.76
4,000	\$29.74	\$4.87
5,000	\$26.66	\$2.92
6,000	\$24.06	
7,000	\$21.61	
8,000	\$19.62	

9,000	\$18.81	
10,000	\$17.53	
11,000	\$16.55	
12,000	\$15.71	
13,000	\$14.68	
14,000	\$14.02	
15,000	\$13.55	
16,000	\$12.54	
17,000	\$11.96	
18,000	\$11.44	
19,000	\$10.99	
20,000	\$10.54	

The initial pricing in this Contract shall remain valid for the period defined in Section 6 of this Contract.

For the purpose of establishing the User cost per month, the number of Users is the cumulative number of users of all Authorized Purchasers that have executed a subscription services contract with Contractor pursuant to the MSA.

**Rebates:** The first 5,000 Users will begin receiving a rebate (in the form of reduced monthly billings) when the total number of combined Users exceeds 20,000. The number of months that the Authorized Purchasers will receive the rebate will be equal to the number of months that the initial Users paid the higher rate. The amount of the rebate is specified in the table in Section 3 of this Contract.

The initial invoice shall be issued on the 1<sup>st</sup> day of the month immediately following the Acceptance of Initial Deliverables described in Section 5 of this Contract.

Invoices shall be issued on the 1st day of the month of the current calendar month in which the Subscription Services will be provided. All undisputed, timely and valid invoices are due in full 15 days after receipt by Authorized Purchaser.

**Default by Non-Payment:** Authorized Purchaser shall not delay payment of monthly User fees based on a dispute or claim relating to Non-Subscription Services.

If Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of the Contract and fails to cure such failure within 45 business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice, Authorized Purchaser shall be in default under Exhibit A, Section 10.2 of the MSA (Attachment 1).

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#### **4. Additional Users**

During the term of this Contract, Authorized Purchaser may add additional Users at any time. The monthly installment fee will be set according to the table in Section 3 for each additional User commencing on the day the additional Users are specified by Authorized Purchaser.

#### **5. Authorized Purchaser Acceptance**

Contractor shall commence the Services and provide Deliverables as set forth in the Contract. Within ten (10) business days after the commencement of Services, Contractor shall provide Authorized Purchaser with an Acceptance of Initial Deliverables Question and Answer Form. The Authorized Purchaser shall complete and return this form to Contractor within ten (10) business days as initial acceptance of Deliverables to date; a non-response shall be deemed as an acceptance of initial Deliverables.

Authorized Purchaser may accept the proposed acceptance test as recommended or modify it as Authorized Purchaser deems reasonable. Contractor shall provide Authorized Purchaser with access to the Subscription Services on or before the commencement date described in Section 1 of this Contract and the implementation schedule agreed to by Authorized Purchaser, the State Archives Division and Contractor. On the transition date, Contractor shall assume responsibility for providing ongoing Subscription Services.

Upon the conclusion of any consecutive forty-five (45) day period of production processing from the transition date as specified in Section 10 of this Contract, when all Service Levels set out the Attachment #2 have been met successfully, the Subscription Services shall be deemed accepted in full. Authorized Purchaser will acknowledge completion of this milestone by written notification to Contractor. Nothing contained in this Section 5 or any other provision of this Contract shall be deemed to prevent Authorized Purchaser from using any portion of the Subscription Services in a live environment for productive processing, and any such use shall not alter, amend or modify any of Contractor's obligations pursuant to the Contract.

#### **6. Period of Performance**

The period of performance of this Contract shall commence on the Contract Effective Date and shall continue for a period of 12 months plus the interim period between the effective date and the date of acceptance (the "Initial Period"). Thereafter, unless Authorized Purchaser notifies Contractor in writing, this Contract shall automatically be renewed annually for additional 12-month periods (each a "Renewal Period") up to a maximum total term of ten years.

Authorized Purchaser may terminate this Contract by providing Contractor with a notice of termination sixty (60) days prior to the termination date.

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## **7. Consulting, Implementation, Training and/or Support Services**

Contractor shall provide the consulting, implementation, training and/or support services related to the Subscription Services as set forth in Section 5 of the MSA.

## **8. Security Procedures**

Contractor shall define certain policies and procedures that it shall have in place in order to provide the level of security associated with the Subscription Services and with the Service Levels set forth in Section 12. These policies and procedures shall be updated by Contractor from time to time to reflect updated Department of Administrative Services Security Standards, emerging technologies, business practices and Internet-related issues. Contractor shall provide written notice to Authorized Purchaser of any changes made to its security policies and procedures within ten (10) days of such changes, and updated policies and procedures shall be distributed through ORMS Support (Helpdesk).

## **9. Specifications and Minimum Technical Requirements**

Contractor warrants that the minimum technical requirements for access to and operation of the Software are:

### ***HP TRIM 7.1 Recommended minimum requirements:***

#### ***HP TRIM client and thin client (32-bit):***

Operating systems:

- Windows XP Service Pack 3
- Windows Vista SP1 (32-bit) - Windows Vista Home Edition not supported
- Windows 7 (32-bit) - Windows 7 Home Edition not supported

Processor: Business class processor

Memory: 1GB RAM

Disk space: 1GB free space

Display: Graphics device capable of displaying a resolution of 1024x768 or higher

#### ***HP TRIM client and thin client (64-bit):***

Operating system: Windows 7 (64-bit) - Windows 7 Home Edition not supported

Processor: Business class processor

Memory: 1GB RAM

Disk space: 1GB free space

Display: Graphics device capable of displaying a resolution of 1024x768 or higher

If future releases of the Software require use of newer versions of any client application or change in any client application configuration, Contractor shall provide 15 - 45 days (depending

on the kind of change and its impact) written notice to Authorized Purchaser prior to the general release of that Software Version.

By the conclusion of the Initial Period Contractor and the Secretary of State's Office shall implement the ORMS HP TRIM software Change Control Board (CCB). The CCB shall consist of representatives of the Secretary of State's Office, State Archives Division, Contractor and selected representatives of Authorized Purchasers. The CCB shall review recommendations, discuss and agree on the priority, implementation and timing of requested changes to the HP TRIM application.

## **10. Transition**

Contractor and the State Archives Division shall assist in developing a transition plan that is approved by Authorized Purchaser. Subscription Services shall be transitioned and in production, as accepted by Authorized Purchaser, within thirty (30) calendar days from the Schedule Effective Date.

## **11. Transition Remedy**

In the event that Contractor fails to meet the date for the completion of the transition into production of the Subscription Services, Contractor shall credit Authorized Purchaser one percent (1%) of the monthly Service fees for every business day the transition is late. If Contractor misses the target date by more than thirty days (30) days, Contractor shall be deemed to be in material breach of the Agreement.

If Authorized Purchaser does not meet its obligations as identified in the transition plan provided by Contractor and Authorized Purchaser is the sole cause of a delay in the project, the transition milestone target dates shall be extended for the same amount of time as the delay. Contractor shall promptly notify the Authorized Purchaser Program Manager, in writing, of any delay in the project schedule as a result of Authorized Purchaser's failure to meet any of its obligations identified above. If Contractor fails to notify Authorized Purchaser of any such Authorized Purchaser failure to meet its obligations, Authorized Purchaser shall be conclusively presumed under the Contract to have met its obligations, and consequently, Contractor shall not be entitled to rely on such delay to excuse it from meeting the milestone target dates.

## **12. Service Levels and Remedies**

### **12.1 Security Service Level.**

Contractor represents and warrants that Contractor shall provide Record Security as specified in Exhibit B, Section e. of the MSA.

The required security processes may include, but are not limited to, the following:

- (i) Contractor shall have staff on duty and at its site 24x7 and capable of identifying, categorizing, and responding to a security incident.
- (ii) Contractor shall notify Authorized Purchaser of any new potential security vulnerability within four (4) hours of discovery. This notification shall include the probable risks associated with the vulnerability.
- (iii) Contractor shall implement a security fix across the application within four (4) hours of approval from Authorized Purchaser.
- (iv) Contractor shall notify the Authorized Purchaser Program Manager within fifteen (15) minutes if Contractor believes that an attack is in process.
- (v) Contractor shall shut down ALL access to the Software or any component of it associated with the Subscription Services within fifteen (15) minutes upon request of the Authorized Purchaser Program Manager or officer of Authorized Purchaser.
- (vi) Contractor shall assist Authorized Purchaser in preparing written responses to audit requirements or findings without charge.
- (vii) After the conclusion of the pilot period, Contractor must conduct and pass a SAS 70 Type II Audit every twelve (12) months during the term of this Contract. Failure by Contractor to pass the audit or to provide the audit results to Authorized Purchaser within fifteen (15) days after receiving the results from the auditor shall constitute a material breach of the MSA.

## **12.2 Record Retrieval Time Service Level.**

Contractor represents and warrants that Contractor shall provide Record Retrieval Delivery Time Levels in the HP TRIM server environment as set forth in Exhibit B, Section f. of the MSA, as amended. Record retrieval delivery time shall be measured at the server end between the ORMS workgroup server and database at Synergy Data Center, as described in Amendment #001 to the Master Agreement #0486 at Section 9.

Contractor represents and warrants that the above performance Service Levels shall be valid with up to 20,000 Users using the application at any given time.

If the Record Retrieval Delivery Time Level of 3 minutes or less falls below 95% in any month, Authorized Purchaser shall be entitled to a credit on that month's bill for Subscription Services according to the table in Exhibit B, Section f. of the MSA, as amended.

### 12.3 Subscription Services Availability Service Level.

Contractor represents and warrants that the Subscription Services shall be available as specified in Exhibit B, Section f. of the MSA, as amended.

Service Availability shall be measured on a 7 x 24 basis (7 days a week, 24 hours per day).

If the Subscription Services availability percentage falls below 99.7% in any month, Authorized Purchaser shall be entitled to a credit on that month's bill for Subscription Services according to the table below that represents the then-current cumulative number of all Authorized Purchaser Users.

A. Scale based on 20,000 users or more.

Availability Percentage	Percentage of Credit
99.60% to 99.69%	10%
99.50% to 99.59%	20%
99.0% to 99.49%	30%
97.0% to 98.99%	50%
Below 97.00%	75%

B. Scale based on 19,999 users or less.

Availability Percentage	Percentage of Credit
99.00% to 99.69%	10%
98.50% to 98.99%	20%
98.00% to 98.49%	30%
97.00% to 97.99%	50%
Below 97.0%	75%

### 12.4 Performance and Availability Scalability.

Contractor represents and warrants that the performance and availability Service Levels in Sections 12.2 and 12.3 above shall be valid and applicable with a concurrent User increase of up to 20,000 Users.

#### **12.5 Notifications to Authorized Purchaser.**

Contractor shall provide proactive notifications to Authorized Purchaser regarding scheduled system-maintenance downtime and system upgrades and enhancements. Contractor shall provide Authorized Purchaser with at least seven (7) calendar days' prior written notice of any scheduled outages; such notices shall include the date of the outage and the start and stop times of the outage.

Scheduled upgrades and enhancements shall be provided between the hours of 8:00 p.m. and 6:00 a.m. Monday through Friday, or during weekends and/or Federal holidays, with the exception of emergency security patches.

#### **12.6 Additional Environment.**

Contractor will provide an additional environment at no additional charge for Authorized Purchaser's testing and/or training purposes, without limitation. Authorized Purchaser agrees not to use the additional environment for production purposes.

#### **12.7 Support and Error Resolution.**

Contractor shall establish and maintain the organization and processes necessary to provide support and error-resolution services to Authorized Purchaser. Contractor shall provide support and error-resolution services on a twenty-four (24) hours a day, seven (7) days a week basis. Authorized Purchaser's HP TRIM Users shall contact the ORMS Support Desk, which shall be staffed by on-site, on-duty Support staff during regular business hours from 7:00 a.m. to 5:00 p.m. Monday through Friday, excluding weekends and Federal holidays. Outside of regular business hours, Users may call the ORMS Support Desk and leave a message for on-call staff, who shall respond according to the priority levels specified in this Section.

Upon receipt of telephone or written notice from the Authorized Purchaser specifying a problem, and upon receipt of such additional information as Contractor may request, Contractor shall respond as described below to resolve reported and reproducible errors in the Subscription Services or SaaS Software, so that the application operates as specified in this Contract. Contractor shall determine the priority level in accordance with the following protocols:

- (i) **SEVERITY 1 – CRITICAL BUSINESS IMPACT.** The production use of the Subscription Services is stopped or so severely impacted that the Authorized Purchaser cannot reasonably continue work; requires round-the-clock attention until the problem is resolved (a "Severity 1 Error").

- a. Contractor shall begin work on the error within fifteen (15) minutes of notification;
  - b. Contractor shall engage development staff until the problem is circumvented or corrected; and
  - c. Contractor shall provide Authorized Purchaser with ongoing communication on the status of the problem resolution.
- (ii) **SEVERITY 2 – SIGNIFICANT BUSINESS IMPACT.** A high-impact problem is affecting Service Levels and/or materially impacting Authorized Purchaser's use of the Subscription Services. Problem resolution shall be initiated within sixty (60) minutes, and the resolution of these problems requires serious and sustained attention during normal business hours (8:00 am to 5:00 pm, Pacific time, Monday through Friday, exclusive of State holidays) until the problems are circumvented or corrected (a "Severity 2 Error").
- a. Contractor shall begin work on the error within sixty (60) minutes of notification;
  - b. Contractor shall engage development staff until the problem is circumvented or corrected; and
  - c. Contractor shall provide Authorized Purchaser with ongoing communication on the status of the problem resolution.
- (iii) **SEVERITY 3 – SOME BUSINESS IMPACT.** This includes problems of general work-queue type and that do not come within the definitions of Severity 1 Error or Severity 2 Error. These problems shall be addressed after Severity 1 Errors and Severity 2 Errors have been corrected and may be pursued during normal business hours on a resources-available basis (a "Severity 3 Error").
- a. Contractor shall begin work on the error within one (1) day of notification; and
  - b. Contractor shall engage development staff to provide a workaround and to resolve the problem as soon as possible after notification by Authorized Purchaser.
- (iv) **SEVERITY 4 – MINIMUM BUSINESS IMPACT.** Authorized Purchaser requests information, an enhancement, or documentation clarification regarding the Subscription Services or SaaS Software but there is no impact on the operation of the Subscription Services or SaaS Software. The implementation or

production use of the Subscription Services or SaaS Software is continuing and there is no work being impeded at the time (a "Severity 4 Error").

- a. Contractor shall provide a response regarding the requested information or documentation clarification within two (2) days of notification by Authorized Purchaser; and
- b. Contractor shall consider enhancements for inclusion in a subsequent update to the Subscription Services, SaaS Software or Documentation.

### 13. Termination and Transition Assistance

Authorized Purchaser may terminate this Contract as provided in Exhibit A, Section 12, of the MSA.

Contractor may terminate this Contract as provided in Exhibit A, Section 12.3, of the MSA.

**BY EXECUTING THIS CONTRACT, THE PARTIES AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.**

AUTHORIZED PURCHASER

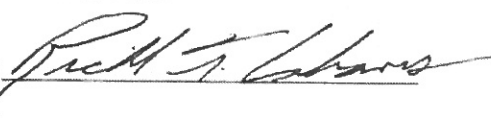
By: 

Name: David Frasher

Title: City Manager

Date: 8-7-14

CONTRACTOR

By: 

Name: Richard T. Chaves


Title: President, Chaves Consulting

Date: July 30, 2014

[The remainder of this page is intentionally left blank.]

By:   
Nancy Ide, City Recorder

Approved as to legal sufficiency:

  
City Attorney

## ATTACHMENT 1

### MASTER SOFTWARE AS A SERVICE AGREEMENT



Adobe Acrobat  
Document

Click on Icon to open PDF copy of Agreement



OFFICE OF THE SECRETARY OF STATE

KATE BROWN  
SECRETARY OF STATE

BARRY PACK  
DEPUTY SECRETARY OF STATE



BUSINESS SERVICES DIVISION  
JEFF MORGAN  
DIRECTOR

255 Capitol Street NE, Suite 180  
Salem, Oregon 97310-1342  
Information (503) 986-2204

Facsimile (503) 378-4991

## MASTER SOFTWARE AS A SERVICE AGREEMENT

### Agreement Number: 0486

This Master Software as a Service Agreement (“Agreement”) is between the State of Oregon (the “State”), by and through the Secretary of State of the State of Oregon (“the Secretary” or “SOS”), acting under a delegation of procurement authority from the Oregon Department of Administrative Services, State Procurement Office (“DAS SPO”), and on behalf of contracting agencies of the State of Oregon, local contracting agencies, and members of the Oregon Cooperative Purchasing Program, and \_Chaves Consulting, Inc., an Oregon corporation (“Contractor”). This Agreement is effective on the date that it has been fully executed by the parties and approved as required by law (“Effective Date”).

The parties agree as follows:

#### 1. Purpose. This Agreement:

- (i) Identifies the process through which Contractor and State and local contracting agencies and members of the Oregon Cooperative Purchasing Program will establish subsequent contracts for the provision of hosted electronic records management system services and related services under this Agreement;
- (ii) Sets forth the general terms and conditions that will apply to contracts pursuant to which Contractor will provide services; and
- (iii) Is not, by itself, a binding contract for the provision of services by Contractor and does not guarantee that any contracts will be executed.

#### 2. Agreement Documents. This Agreement consists of this document and the following Exhibits, each of which is attached to and incorporated into this Agreement:

- (i) Exhibit A – Terms and Conditions
- (ii) Exhibit B – Schedule of Services and Compensation
- (iii) Exhibit C – Insurance
- (iv) Exhibit D – Subscription Services Contract
- (iv) Exhibit E – Non-Subscription Services Contract
- (v) Exhibit F – VCAF Report
- (vii) Exhibit G – Contractor Data and Tax Certification
- (vii) Exhibit H – Certification Statement for Independent Contractor

- (vii) Exhibit I – Request for Proposal, RFP #102-1752-10
- (viii) Exhibit J – Contractor’s Proposal

Any conflict among the provisions of the Agreement shall be resolved according to the following descending order of precedence: (a) the terms and conditions of this Agreement, less its Exhibits; (b) Exhibit I; (c) Exhibit A; (c) Exhibit B; (d) the Contract; (e) Exhibits C, F, G, H, and J.

**3. Application of Provisions.** The provisions of Exhibits A, B, C, G, and H of the Agreement apply to and are incorporated into each Contract for services executed between Contractor and an Authorized Purchaser as provided in Section 4. "Authorized Purchaser" means a contracting agency, including a local contracting agency, as those terms are defined in ORS 279A.010, or any member of ORCPP that enters into a Contract with Contractor under the terms and conditions of the Master Agreement. "Contract" means the executed agreement between Authorized Purchaser and Contractor entered into pursuant to the terms and conditions of the Agreement, including its exhibits, and substantially in either of the forms attached to the Agreement as Exhibit D or Exhibit E. "ORCPP" means the Oregon Cooperative Purchasing Program, which recognizes certain agencies and organizations within the state of Oregon as authorized to purchase the goods and services available under certain price agreements entered into by the State.

#### **4. Contracts.**

**a.** An Authorized Purchaser may enter into a binding and enforceable contract for Contractor’s services by executing a contract substantially in the form attached hereto as Exhibit D or Exhibit E, based upon the type of service required. Each Contract shall create a separate contract between Agency and Contractor. Each Contract so executed shall be substantially in the form attached as Exhibit D or Exhibit E.

**b.** Each Contract is enforceable in accordance with its terms and shall be independent of all other such Contracts. Each Contract shall specify the services that Contractor will provide and shall make the terms and conditions of Exhibit A applicable to the provision of such services. Contractor shall not accept any Contract that does not comply with these requirements.

**5. Services.** The services that Contractor agrees to make available under Contracts are listed in Exhibit B and are described as Subscription Services and Non-subscription Services (collectively, the “Services”). Contractor agrees to perform the Services as more specifically described under each Contract.

**6. Compensation.** Contractor shall be compensated for completing Services based on the rates set forth in Exhibit B. The assessment of VCAF is in addition to, and not a part of, the prices for Services set forth in the Contract.

#### **7. Administrative Fees and Volume Sales Reports.**

**a. Definitions.** The following definitions apply to this section:

(i) “VCAF Report” means the quarterly report substantially in the form attached hereto as Exhibit F.

(ii) “Vendor Collected Administrative Fee” or “VCAF” means a charge that is assessed to ordering entities that purchase from statewide contracts or price agreements. The fee is collected by the Contractor. The charge is set by the State as a percentage of reported sales that are made to authorized purchasers under the resulting contracts and is collected and rebated quarterly to the State by the Contractor. The VCAF fee under this Agreement is 2 % of each sale.

**b. Administrative Fees/Payment.** Within (30 ) calendar/business days after the end of each quarter during the term of this Agreement, Contractor shall pay to the State of Oregon, Secretary of State VCAF in an amount equal to two Percent (2 %) of Contractor’s total sales made to Authorized Purchasers. CONTRACTORS MAY NOT REFLECT THE VCAF FEE AS A SEPARATE LINE ITEM CHARGE TO AUTHORIZED PURCHASERS. CONTRACTOR’S RATES SHALL REFLECT ALL CHARGES TO AUTHORIZED PURCHASERS. For the purposes of this Agreement, quarters end March 31, June 30, September 30, and December 31. The State will invoice Contractor for the VCAF on a State generated invoice from the volume sales report generated by the Contractor. Contractor is responsible for timely reporting and payment, regardless of the entity that actually reports or makes VCAF payment to the State. No VCAF will be charged during the pilot period.

**c. Volume Sales Reports.** Contractor shall submit a Volume Sales Report, due by the 15<sup>th</sup> day following the end of each calendar quarter during the term of the Agreement, which contains: (i) complete and accurate details of the net receipts for the relevant quarterly period; (ii) Contractor’s corresponding calculation of the VCAF due to the State for that period; and (iii) such other information as the State may reasonably request. Contractor shall send a Volume Sales Report each quarter, whether or not there are reportable sales or VCAF due to the State.

**d. Volume Sales Report Information.** Contractor shall provide the following information on the Volume Sales Report:

- Agreement item number
- Authorized Purchaser
- Contract number
- Date ordered
- Quantity of each item ordered with Contractor’s item #'s and description
- Unit price and extended total
- Manufacturer or provider of each product or service ordered
- Total dollar amount for ending quarter

**e. Volume Sales Report Format.** Contractor shall provide Volume Sales Reports in a format approved by the State. Reports CD or by e-mail are preferred; however, hard copy reports are acceptable. Excel or Lotus spreadsheet formats are preferred. All other report formats must be approved by the State's Agreement administrator prior to submission of the first report.

**f. Report Receipt/Acceptance.** The State's receipt or acceptance of any of the reports furnished pursuant to this Agreement, or any sums paid hereunder, shall not preclude the State from challenging the validity thereof at any time. THE STATE RESERVES THE RIGHT TO TERMINATE THIS AGREEMENT IF VOLUME SALES REPORTS ARE NOT RECEIVED AS SCHEDULED.

**g. Payment of VCAF.** Upon receipt of the invoice from the State, as directed by the Agreement administrator, Contractor shall remit payment in the form of a check to the State for the amount indicated on the invoice. Contractor shall contact the Contract Administrator if no invoice is received within thirty (30) days after sending the Volume Sales Report to the State. Failure to submit Volume Sales Report does not release Contractor from requirement to timely remit the required VCAF.

**h. Interest.** Any payments Contractor makes or causes to be made after the due date as indicated on the invoice shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full. The State's right to interest on late payments shall not preclude the State from exercising any of its other rights or remedies pursuant to this Agreement or otherwise with regards to Contractor's failure to make timely remittances.

**i. Audit.** The State, as its own expense (except as provided herein), shall have the right during regular business hours, at Contractor's premises, and upon reasonable notice, by itself or by a person authorized by it, to audit Contractor's records and other pertinent data, to determine and verify the figures reported in any Volume Sales Report furnished by Contractor. In the event that any such audit reveals underpayment of the VCAF, Contractor shall forthwith pay the amount of deficiency, together with interest thereon at the rate provided in this Section. At the State's request, Contractor shall pay the reasonable cost of an audit, but only if such audit reveals that an underpayment may exist as determined by the State.

## **8. Term of Agreement; Amendments.**

**a.** The initial term of this Agreement shall be thru the pilot project or December 31, 2013, whichever occurs first. Following the initial term and upon agreement of the parties, this Agreement may be assigned to DAS SPO and extended for a term of two (2) years, after which the Agreement may be extended annually for additional terms, provided, however, that the maximum duration of this Agreement, including all additional terms, shall be ten (10) years.

It is anticipated that the State will secure a minimum of 2,000 users for the pilot phase of this Agreement. In the event the State fails to achieve a minimum base of 2,000 Users by December 31, 2010 the parties may mutually agree to terminate the Agreement or extend the period of time to achieve 2,000 users. In the event the user base of 2,000 Users drops below 2,000 Users the parties shall immediately review the circumstances and mutually determine a new per User price.

At least thirty (30) calendar days before the expiration of a term, the State shall notify Contractor in writing of its intent to extend this Agreement. If both parties elect to extend this Agreement, the terms and conditions set forth in this Agreement shall remain the same during any additional term.

**b.** The State reserves the right in its sole discretion to extend this Agreement for not more than one calendar month beyond any term or Extension Term. The State shall notify Contractor in writing of the one-month extension at least 30 calendar days before the current term or the Extension Term expires. Contractor may not increase pricing during any one-month extension obtained pursuant to this section. The State may not obtain more than one such extension.

**c.** No Contracts shall be executed after the termination or expiration of the Agreement. Upon termination or expiration of the Agreement, at the request of any Authorized Purchaser, Contractor shall continue to provide the Products and Services and meet its obligations under any applicable Contract issued prior to expiration or termination of the Agreement unless such Contract is otherwise terminated pursuant to the terms and conditions of the Contract. If Contractor provides any Authorized Purchaser with Services under an existing Contract during a period following the termination or expiration of the Agreement, the terms and conditions and pricing of such Contract shall remain in effect as well as Contractor's reporting requirements.

**d.** The parties have determined that during the term of the Agreement or a Contract, the parties may need to modify selected terms, conditions, prices and types of products and services under circumstances related to the following illustrative, although not exhaustive, categories of anticipated amendments:

- (i) Amendments required as a result of necessary changes in the State's business process;
- (ii) Amendments to change the licensing structure;
- (iii) Amendments to change the level of technical support or hosting services offered under the Agreement or purchased by Authorized Purchaser;
- (iv) Amendments required as a result of innovations in technology, hardware, and software that are within the overall scope of Services described in the Agreement and that would benefit the State and Authorized Purchasers;

- (v) Amendments required as a result of changes in user applications that require additional upgrades which are not required by the software initially provided under the Agreement;
- (vi) Amendments to add, delete, or otherwise modify products or Services, or both, within the scope of the RFP and the Agreement;
- (vii) Amendments to extend the term of the Agreement;
- (viii) Amendments to change pricing;
- (ix) Amendments to change the Vendor Collected Administrative Fee (VCAF);
- (x) Amendments required as a result of changes in applicable law; or
- (xi) Amendments to change the contract administration of the Agreement or Contracts.

## **9. Termination.**

- a.** The parties may terminate this Agreement at any time by the mutual written consent of both parties.
- b.** The State may also terminate this Agreement immediately upon notice to Contractor, or at such later date as it may establish in such notice, if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the purchase of the services offered by Contractor under this Agreement is prohibited or if the State fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to administer this Agreement.
- c.** Upon receipt of written notice of termination, Contractor shall stop performance under this Agreement as directed by the State.

## **10. Provision of Services.**

- a.** This is not an exclusive agreement and the State reserves the right to engage other contractors to provide the same or similar services.
- b.** Contractor shall perform, and Authorized Purchaser will pay for, Services only when performed under a Contract. An individual Contract will specify the services for that Contract.
- c.** Contractor is responsible for completing all Services as defined in the Contract to the satisfaction of Authorized Purchaser.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT.

**CONTRACTOR**

Authorized Signature: 

Title: PRESIDENT Date: 12/6/2010

Telephone number: 541 523-1029 Facsimile number: 541 523-1031

**SECRETARY OF STATE**

Authorized Signature: 

Title: STATE ARCHIVIST Date: 12/8/10

Telephone Number: 503-986-2241 Facsimile Number: 503-378-4991

APPROVED AS TO LEGAL SUFFICIENCY

BY EMAIL DATED: 11/22/2010

## EXHIBIT A

### CONTRACT TERMS AND CONDITIONS

**1. Application of Provisions.** The provisions of this Exhibit A, as well as Exhibits B, C, G, and H of the Agreement apply to the Agreement and also apply to and are incorporated into each Contract executed between Contractor and Authorized Purchaser. When applying the applicable provisions to the Agreement, where appropriate for the context, the references to “Contract” shall mean the Agreement.

**2. Definitions.** The following definitions apply to the Contract:

"Authorized Purchaser" means a contracting agency, including a local contracting agency, as those terms are defined in ORS 279A.010, or any member of ORCPP that enters into a Contract.

“Authorized Purchaser Data” means all data created by or in any way originating with Authorized Purchaser, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with Authorized Purchaser, whether such data or output is stored on Authorized Purchaser’s hardware, Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by Authorized Purchaser or by Contractor.

“Authorized Purchaser Intellectual Property” means any intellectual property that is owned by Authorized Purchaser. Authorized Purchaser Intellectual Property includes any derivative works and compilations of any Authorized Purchaser Intellectual Property.

“Authorized Representative” means a person representing a party to the Contract who is authorized to make commitments and decisions on behalf of the party regarding the performance of the Contract. Each party’s Authorized Representative is the person so identified in the Contract.

“Contract” means the executed agreement between Authorized Purchaser and Contractor entered into pursuant to the terms and conditions of the Agreement, incorporating by reference Exhibits A, B, C, G, and H of the Agreement and substantially in either of the forms attached to the Agreement as Exhibit D or Exhibit E.

“Contractor Intellectual Property” means any intellectual property that is owned by Contractor and contained in or necessary for the use, or optimal use, of the Deliverables. Contractor Intellectual Property includes Documentation, Work Product, and derivative works and compilations of any Contractor Intellectual Property. Contractor Intellectual Property does not include COTS Software.

“COTS Software” means commercial off-the-shelf software that Contractor delivers to Agency pursuant to the provision of Services.



“Deliverables” means the Services, including Work Product, and all Software or other products that Contractor is required to deliver to Authorized Purchaser under the Contract.

“Desktop Specification” means Contractor’s recommended minimum technical specifications required to access and utilize the SaaS Software specified in the Contract and in accordance with the Contract’s service levels.

“Documentation” means all documents, including documents that are Deliverables described in the Contract and includes, but is not limited to, any and all operator’s and user’s manuals, training materials, guides, commentary, listings, requirements traceability matrices and other materials for use in conjunction with and for the operation of products and Services that are to be delivered by Contractor under the Contract.

“Non-subscription Services” means the services provided to Authorized Purchaser by Contractor under the Contract that are not included in the definition of Subscription Services. Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to Authorized Purchaser by Contractor under this Agreement, together with all documentation provided by or otherwise required of Contractor for any of the consulting, implementation, customization or other services it provides.

“ORCPP” means the Oregon Cooperative Purchasing Program, which recognizes certain agencies and organizations within the state of Oregon as authorized to purchase the goods and services available under certain price agreements entered into by the State.

“SaaS Application” and “SaaS Software” mean the Software as Service computer software listed in a Subscription Services Contract to which Contractor has granted Authorized Purchaser access and use as part of the Subscription Services. This includes any customization, other derivative works, upgrades, releases, fixes or patches related to the software that Contractor develops or deploys during the term of the Agreement, together with all Documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes or patches.

“Service Levels” means the performance specifications for Services performed by Contractor.

“Services” means Non-subscription Services and Subscription Services.

“Software” means the software, including COTS Software and SaaS Software, identified in Exhibit B, and all related Documentation, that the Contractor will deliver to Authorized Purchaser.

“SOS” means the Secretary of State of the State of Oregon.

“State” means the State of Oregon, acting by and through the Department of Administrative Services, State Procurement Office (“DAS SPO”) or the Secretary of State of the State of Oregon (“Secretary” or “SOS”).

“Subscription Services” means Authorized Purchaser’s access to and use, and Contractor’s provision, of the SaaS Software and other services in accordance with the terms and conditions set forth in the Contract.

“Third Party Intellectual Property” or “Third Party Products” means any intellectual property owned by parties other than Authorized Purchaser or Contractor and contained in or necessary for the use of the Deliverables. Third Party Intellectual Property includes COTS Software owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.

“User” means Authorized Purchaser’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by Authorized Purchaser to access and use the SaaS Software and any part or portion of the Subscription Services or Non-subscription Services in the performance of their duties for Authorized Purchaser.

“User Information” means all information directly or indirectly obtained from Users accessing the SaaS Software where such information is obtained by Contractor or by any of its employees, representatives, agents or any Third Parties having contractual privity with Contractor or who are under Contractor’s supervision or control.

“Work Product” means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registrable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor’s subcontractors or agents (either alone or with others) pursuant to the Master Agreement. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Authorized Purchaser Intellectual Property, Contractor Intellectual Property or Third Party Intellectual Property.

### **3. Services.**

#### **3.1 Subscription and Non-Subscription Services.**

3.1.1 Contractor shall provide and Authorized Purchaser may acquire the Subscription and Non-subscription Services as described in this Agreement. As part of the Services, Contractor shall manage the recordation of User Information. Such User Information shall be treated as Authorized Purchaser’s Confidential Information.

3.1.2 Authorized Purchaser and Contractor shall execute a Contract, in substantially the same form as the sample Contracts attached to this Agreement as Exhibit D or Exhibit E, for Authorized Purchaser’s access to and use of the Software, together with any

applicable Service Levels, maintenance, support and any other services. The terms and conditions of each Contract shall be independent of, and shall have no impact upon, the provisions of any other Contract.

Each Contract is subject to the Agreement and must include the following mandatory language:

THIS CONTRACT IS ENTERED INTO PURSUANT TO AGREEMENT # 0486 AND IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH THEREIN. THE TERMS AND CONDITIONS OF THE AGREEMENT APPLY TO THIS CONTRACT AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

3.2 Delivery. All goods and Software to be supplied by Contractor will be new unless expressly authorized by Authorized Purchaser. Contractor shall deliver goods and Software to Authorized Purchaser F.O.B. to the destination specified in the Contract in accordance with the Delivery Schedule. During the period that goods and Software are in transit, and up until the time that the goods and Software are tendered so as to enable Authorized Purchaser to take delivery, Contractor and its insurers, if any, relieve the Authorized Purchaser and the State of Oregon of the responsibility for all risk of loss of, or damage. Thereafter, all risk of loss of, or damage shall be borne by the Authorized Purchaser.

3.3 Warranties. If applicable, Contractor shall have all third party warranties covering the goods and Software transferred to the Authorized Purchaser at time of delivery at no additional charge. Contractor shall also furnish to the Authorized Purchaser the details of the third party publisher warranties.

3.4 Responsibilities of Authorized Purchaser. If the Contract requires Authorized Purchaser to provide any software, goods or services, and Authorized Purchaser fails to provide the requisite quality or quantity of such software, goods or services, or fails to provide such software, goods or services in a timely manner, Contractor's sole remedy shall be an extension of the applicable delivery dates corresponding to the delay caused by Authorized Purchaser's failure.

3.5 Acceptance of Services.

3.5.1 Contractor shall commence the Services and provide Deliverables as set forth in the Contract. Unless otherwise provided in the Contract, within ten business days after commencement of the Services, Authorized Purchaser shall perform any acceptance tests to determine whether the Services meet the acceptance criteria designated by Authorized Purchaser. If the acceptance tests establish that the Services conform to the acceptance criteria, then Authorized Purchaser shall issue written notice of acceptance to Contractor, and "final acceptance" shall be deemed to have occurred.

3.5.2 If the Authorized Purchaser determines that the Services do not meet the acceptance criteria, Authorized Purchaser shall notify Contractor in writing of Authorized

Purchaser's rejection of the Services and describe in reasonable detail the basis for rejection. Upon receipt of notice of non-acceptance, Contractor shall, within a 15 calendar day period, modify or improve the Services at Contractor's sole expense to ensure that the Services meet the acceptance criteria, and notify the Authorized Purchaser in writing that it has completed such modifications or improvements and re-tender the Services to Authorized Purchaser. Authorized Purchaser shall thereafter review the modified or improved Services within 15 calendar days of receipt. Failure of the Services to meet the acceptance criteria after the second set of acceptance tests shall constitute a default by Contractor. Upon such default, Authorized Purchaser may either allow Contractor to continue to correct the Services or declare a material breach of the Contract by Contractor.

3.5.3. If the Services are rejected or acceptance is revoked, Contractor shall refund any payments that have been made with regard to the Services and shall (at Contractor's sole cost and expense) remove the Software within seven calendar days of receiving notice of rejection or revocation of acceptance.

3.5.4. No provision of this Section 3.5 precludes Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

### 3.6 Warranty Period.

3.6.1 For a period of one year after final acceptance, Contractor shall, at no additional charge to Authorized Purchaser, furnish such materials and services as shall be necessary to correct any defects in the Services and maintain the Services in good working order. Notwithstanding the expiration of the warranty period, Contractor shall be obligated to cure defects discovered during the warranty period.

## 4. **Contractor's Personnel.**

4.1 Authorized Representative; Program Manager. Contractor shall designate an Authorized Representative and Program Manager for the Services. The Authorized Representative and Program Manager shall be familiar with Authorized Purchaser's business operations and objectives as necessary for the provision of the Services and shall be responsible for Contractor's performance of the Services in accordance with the Agreement. The Program Manager shall participate with Authorized Purchaser in periodic review sessions and shall provide Service reports at Authorized Purchaser's request.

4.2 Subcontractors. Contractor shall not use subcontractors to perform the Services unless specifically authorized to do so by Authorized Purchaser. Contractor represents that any assigned employees and authorized subcontractors shall perform the Services in accordance with the Agreement.

## **5. Compensation.**

5.1 Rates. Authorized Purchaser shall pay Contractor according to the rates set forth on Exhibit B for the Services and Software provided under the Contract. The assessment of VCAF, as provided in the Agreement, is in addition to, and not a part of, the prices for Services set forth in the Contract.

5.2 Expenses. Contractor shall not be reimbursed for any expenses incurred by Contractor in the performance of the Services.

5.3 Invoices. Unless otherwise agreed, Authorized Purchaser shall not pay Contractor more than once each month upon Contractor's submission of detailed invoices that set forth the Services accepted by Authorized Purchaser. Such invoices shall comply with the requirements of this Section 5 and shall describe the Deliverables completed and accepted by Authorized Purchaser for which Contractor seeks compensation. Contractor shall request payment only for Deliverables accepted by Authorized Purchaser. The invoices also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor shall submit invoices to Authorized Purchaser's Authorized Representative. Authorized Purchaser will have the right to review each such invoice for compliance with the requirements of this Section 5 and any other relevant provisions of the Agreement. All payments to Contractor are subject to ORS 293.462.

5.4 Limit on Payments. No payment will be made for any Services provided before the effective date or after termination of the Agreement or under a specific Contract. Authorized Purchaser's payments are conditioned upon Authorized Purchaser receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations. Nothing in the Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

5.5 Price Renegotiation. 60 calendar days prior to the expiration of the Initial Term, and then upon each renewal thereafter, either Contractor or the State may request price renegotiation. This price renegotiation will be conducted in good faith between the parties and may result in a price change being offered to the State for continuing Services and Product offerings. If Contractor and the State reach an agreement during the 60 calendar day re-negotiation period, Contractor will adjust its pricing accordingly for the applicable Extension Term and will continue to provide the Services. If the parties are unable to reach an agreement, the Agreement will terminate subject to an Authorized Purchaser's right to transition the Services.

5.6 No Liability for Non-State Authorized Purchasers. The State bears no liability for Services provided by Contractor to parties who are not Authorized Purchasers or in Contracts entered into between Authorized Purchasers that are not State agencies, and the

State expressly disclaims any such liability. With regard to Authorized Purchasers that are not State agencies, Contractor shall look solely to the respective party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Services and the resulting contractual relationship, if any, with each such contracting party.

## **6. Right to Use; Ownership and License in Product or Services.**

6.1 Use. Contractor grants Authorized Purchaser an unlimited, transferable, non-exclusive right to access and to use the Subscription Services listed on any SaaS Subscription Schedules and the Non-Subscription Services listed on the Contract.

6.2 License. Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to Authorized Purchaser pursuant to the Services performed. Contractor grants Authorized Purchaser a license to all other Contractor Intellectual Property. Unless otherwise stated in the Contract, Contractor grants Authorized Purchaser a non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Contractor Intellectual Property, and to authorize others to do the same on Authorized Purchaser's behalf.

6.3 Work Product. Contractor owns all Work Product. Contractor grants Authorized Purchaser a non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Work Product, and to authorize others to do the same on Authorized Purchaser's behalf.

6.4 Third Party Intellectual Property. Contractor shall secure on Authorized Purchaser's behalf, in the name of Authorized Purchaser and subject to Authorized Purchaser's approval, a license to Third Party Intellectual Property sufficient to provide the Services and fulfill the business objectives identified in the Agreement or a Contract, and to authorize others to do the same on Authorized Purchaser's behalf

6.5 Authorized Purchaser Data and Intellectual Property. Authorized Purchaser owns all Authorized Purchaser Data and Intellectual Property provided to Contractor pursuant to the Contract. Authorized Purchaser grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Authorized Purchaser Intellectual Property and Authorized Purchaser data and background information only to fulfill the purposes of the Contract. Authorized Purchaser's license to Contractor is limited to the term and confidentiality obligations of the Contract.

6.6 No Rights. Except as expressly set forth in the Contract or Agreement, nothing shall be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by Authorized Purchaser. Except as expressly set forth in the Contract or Agreement, shall be construed as granting to or conferring upon Authorized Purchaser any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.

6.7 Competing Services. Subject to the provisions of this Section 6 and Contractor's obligations with respect to Confidential Information, nothing in the Contract or Agreement precludes or limits in any way the right of Contractor to: (i) provide services similar to those contemplated in the Agreement, or consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables. The parties, including the State, Contractor and Authorized Purchasers, shall be free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under the Contract free of any use restriction or payment obligation to another party.

## **7. Confidentiality and Non-Disclosure.**

7.1 Confidential Information. Contractor acknowledges that it and its employees or subcontractors may, in the course of performing their responsibilities under the Contract, be exposed to or acquire information that is confidential to Authorized Purchaser or Authorized Purchaser's clients. Any and all information of any form obtained by Contractor or its employees or subcontractors in the performance of the Contract is confidential information of Authorized Purchaser ("Confidential Information"). Contractor shall treat any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor with respect to confidentiality in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by Authorized Purchaser to others without restrictions similar to those imposed by the Contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under the Contract; (d) is obtained from a source other than Authorized Purchaser without the obligation of confidentiality, (e) is disclosed with the written consent of Authorized Purchaser, or; (f) is independently developed by employees or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

7.2 Non-Disclosure. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the provision of Services to Authorized Purchaser hereunder, and to advise each of its employees and subcontractors of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Authorized Purchaser in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise the State and Authorized Purchaser immediately in the event

Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of the Contract and Contractor will at its expense cooperate with the State and Authorized Purchaser in seeking injunctive or other equitable relief in the name of Authorized Purchaser or Contractor against any such person. Except as directed by Authorized Purchaser, Contractor will not at any time during or after the term of the Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with the Contract, and that upon termination of the Contract or at Authorized Purchaser's request, Contractor will turn over to Authorized Purchaser all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Contractor shall ensure the compliance of its employees and subcontractors with this Section 7.

**7.3 Identity Theft.** In the performance of the Contract, Contractor may have possession or access to documents, records or items that contain "Personal Information" as that term is used in ORS 646A.602(11), including Social Security numbers. Personal Information is a type of Confidential Information that is highly sensitive and subject to additional protection. Therefore, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, Contractor shall have in place, a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628.

7.3.1 Contractor shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control under the Contract. Contractor shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Contractor shall not use, distribute or dispose of any Personal Information other than expressly permitted by the State, the Authorized Purchaser, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

7.3.2 Contractor shall report to the State and Authorized Purchaser, as promptly as possible, any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Contractor receives access, possession, custody or control in the performance of the Contract.

**7.4 Security Policies; NDA.** Contractor at all times shall comply with Authorized Purchaser's security policies. Contractor shall upon Authorized Purchaser's request provide a written nondisclosure agreement and obtain such from Contractor's employees or subcontractors performing Services under the Contract.

**7.5 Injunctive Relief.** Contractor acknowledges that breach of this Section 7, including disclosure of any Confidential Information, will give rise to irreparable injury



to Authorized Purchaser that is inadequately compensable in damages. Accordingly, Authorized Purchaser may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Authorized Purchaser and are reasonable in scope and content.

**7.6 Publicity.** Contractor agrees that news releases and other publicity relating to the subject of the Contract or Agreement will be made only with the prior written consent of the State and Authorized Purchaser.

**7.7 Transition Assistance.** Upon expiration or termination of all or part of the Subscription Services or Non-subscription Services being provided under the Contract and upon Authorized Purchaser's request and subject to continued payment for so long as Services are maintained, Contractor shall provide the following termination assistance: Contractor shall continue to provide the Subscription Services and Non-subscription Services that were provided by Contractor prior to the expiration or termination and any new services requested by Authorized Purchaser that may be required to facilitate the transfer of the affected Subscription Services and Non-subscription Services to Authorized Purchaser, a Third-Party service provider or other Authorized Purchaser designee, as applicable, including providing to Authorized Purchaser or Third-Party personnel training in the performance of the affected Subscription Services and Non-subscription Services. At no additional cost, Contractor shall provide to Authorized Purchaser and any designated Third-Party service provider: (i) in writing, applicable requirements, standards, policies, operating procedures and other documentation relating to the affected execution environment of the Subscription Services and Non-subscription Services; and (ii) necessary access to the systems and sites from which the affected Subscription Services and Non-subscription Services were provided, subject to Authorized Purchaser's right to review same. Contractor shall provide the termination assistance outlined in this section for a period of up to twelve (12) months, unless otherwise specified in the Contract. Immediately upon expiration or termination of the Agreement or the Contract, Contractor shall provide Authorized Purchaser with a final export of Authorized Purchaser Data in a format specified by Authorized Purchaser and shall certify the destruction of all Authorized Purchaser Data within the possession of Contractor that is solely related to the expired or terminated Subscription Services or Non-subscription Services.

## **8. Contractor's Representations and Warranties.**

**8.1 General Representations and Warranties.** In addition to all other Contractor representations and warranties in the Contract Contractor also represents and warrants to Authorized Purchaser that:

- a) Contractor has the power and authority to enter into and perform the Contract;

- b) The Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- c) Contractor will, at all times during the term of the Contract, be qualified to do business in the State of Oregon, professionally competent and duly licensed to perform the Services;
- d) Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Services, and Contractor's provision of the Services shall not violate any such law, ordinance, regulation or order;
- e) Contractor's performance under the Contract creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform the Services under the Contract; and
- f) The Contractor Data and Tax Certification in the form attached to the Agreement as Exhibit G and the Certification Statement For Independent Contractor in the form attached to the Agreement as Exhibit H are true and accurate as of the Effective Date, and Contractor will notify Authorized Purchaser in writing if any such data or certifications change during the term of the Agreement such that the attached Exhibits G or H, if applicable, are no longer true and accurate.

8.2 Contractor's Performance Warranties. Contractor represents and warrants to Authorized Purchaser that:

- a) Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors perform the Services described in the Contract in accordance with the highest standards prevalent in the industry or business most closely involved in providing the Services that Contractor is providing to Authorized Purchaser pursuant to the Contract;
- b) Through the expiration of the warranty period, all Services delivered by Contractor to Authorized Purchaser shall conform to the acceptance criteria set forth in the Contract and any Documentation provided by Contractor and shall be free from error or defect that materially impairs their use, and shall be free from defects in materials, workmanship and design;
- c) Except as otherwise permitted or provided in the Contract, all Services supplied by Contractor to Authorized Purchaser shall be transferred to Authorized Purchaser free and clear of any and all restrictions on or conditions of transfer,

modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind;

d) When used as authorized by the Contract, no Service delivered by Contractor to Authorized Purchaser infringes, nor will Authorized Purchaser's use, duplication, or transfer of such Services infringe, any copyright, patent, trade secret, or other proprietary right of any third party;

e) Except as otherwise set forth in the Contract, any subcontractors performing work for Contractor have assigned all of their rights in the Services to Contractor or Authorized Purchaser and no third party has any right, title or interest in any Services supplied to Authorized Purchaser under the Contract;

f) Contractor will maintain, operate and enforce, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, an active and effective information security program to preserve the security and confidentiality of all Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control; and

g) At the time of delivery and installation of the Software provided through the Contract, the Software shall be free of what are commonly defined as viruses, worms, spyware, and other malicious defects that will hamper performance of the software, collect unlawful personally identifiable information on users, or prevent the software from performing as required under the terms and conditions of the Contract.

## **9. Indemnities.**

9.1 General Indemnity. Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Authorized Purchaser and their agencies, subdivisions, officers, directors, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses for personal injury, including death, damage to real property and damage to tangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under the Contract; provided that Contractor shall have no obligation to indemnify the State of Oregon or Authorized Purchaser from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of the State of Oregon or Authorized Purchaser, and their officers, employees or agents.

9.2 IP Indemnity. In addition to and without limiting the generality of Section 9.1, Contractor expressly agrees to, indemnify, defend and hold the State of Oregon and Authorized Purchaser and their agencies, subdivisions, officers, directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages,

liabilities, statutory penalties, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Services or use thereof infringe any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, "Intellectual Property Rights") of any third party. If Contractor believes at any time that the Software or Services infringe a third party's Intellectual Property Rights, Contractor may upon receipt of Authorized Purchaser's prior written consent, which Authorized Purchaser shall not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Authorized Purchaser the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the Software continues to function in conformance with the requirements set forth in the Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of the Contract, and Authorized Purchaser may pursue any rights and remedies available to it under the Contract, including termination. Contractor shall not be liable under this Article 9.2 for any claim for infringement based solely on the following:

- a) Authorized Purchaser's modification of the Software or Services other than as set forth in the Contract or without the written permission of Contractor;
- b) Use of the Software or Services in a manner other than as contemplated by the Contract or as authorized in writing by Contractor; or
- c) Use of the Software or Services in combination, operation, or use of with other products in a manner that does not comply with their specifications, not specified by Contractor or of which Contractor has not approved in writing.

9.3 Control of Defense and Settlement. Contractor's obligation to indemnify Authorized Purchaser as set forth in Sections 9.1 and 9.2 is conditioned on Authorized Purchaser providing to Contractor prompt notification of any claim or potential claim of which Authorized Purchaser becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 9.1 or Section 9.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Authorized Purchaser of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

9.4 Insurance. Contractor shall provide insurance as required by Exhibit C.

## **10. Events of Default.**

### **10.1 Default by Contractor.** Contractor shall be in default under the Contract if:

- a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within 60 days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- b) Contractor no longer holds a license or certificate that is required for Contractor to perform the Services and Contractor has not obtained such license or certificate within 30 business days after delivery of Authorized Purchaser's notice or such longer period as Authorized Purchaser may specify in such notice; or
- c) Contractor commits any material breach or default of any covenant, warranty, obligation or certification under the Contract, fails to perform the Services in conformance with the specifications and warranties provided herein, or clearly manifests an intent not to perform future obligations under the Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within 30 business days after delivery of Authorized Purchaser's notice or such longer period as Authorized Purchaser may specify in such notice.

### **10.2 Default by Authorized Purchaser.** Authorized Purchaser shall be in default under the Contract if:

- a) Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of the Contract and Authorized Purchaser fails to cure such failure within 30 business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or
- b) Authorized Purchaser commits any material breach or default of any covenant, warranty, or obligation under the Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and Authorized Purchaser fails to cure such failure within 30 business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

## **11. Remedies for Default.**

### **11.1 Authorized Purchaser's Remedies.** In the event Contractor is in default under Section 10.1, Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under the Contract and at law or in equity, which include, without limitation:

- a) termination of the Contract under Section 12.2;
- b) withholding all monies due for Services that Contractor is obligated but has failed to perform within 30 days after Authorized Purchaser has notified Contractor of the nature of Contractor's default;
- c) credits or other remedies for failure to meet Service Levels;
- d) with respect to Services for which Authorized Purchaser has paid before acceptance, a return of all moneys previously paid for such Services;
- e) initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
- f) exercise of its right of setoff.

11.2 Remedies Cumulative. These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Section 10.1, the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 12.1.

11.3 Contractor's Remedies. In the event the State terminates the Agreement or Authorized Purchaser terminates the Contract, as set forth in Section 12.1, or in the event Authorized Purchaser is in default under Section 10.2 and whether or not Contractor elects to exercise its right to terminate the Contract under Section 12.3., Contractor's sole monetary remedy shall be a claim for the unpaid invoices; the percentage of Services completed on each Deliverable up to the not to exceed amount for the Deliverable set forth in the Contract, authorized expenses incurred, less previous amounts paid and any claims which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 11.3, Contractor shall pay any excess to Authorized Purchaser upon written demand.

## **12. Termination; Suspension.**

12.1 Authorized Purchaser's Right to Terminate. Authorized Purchaser may, at its sole discretion, terminate the Contract, as follows:

- a) Authorized Purchaser may terminate the Contract for its convenience upon 30 days' prior written notice to Contractor.
- b) Authorized Purchaser may terminate the Contract if the Authorized Purchaser fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's services.

c) Authorized Purchaser may terminate the Contract if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Services under the Contract is prohibited or if Authorized Purchaser is prohibited from paying for such Services from the planned funding source.

12.2 Authorized Purchaser's Right to Terminate for Cause. In addition to any other rights and remedies Authorized Purchaser may have under the Contract, Authorized Purchaser may terminate the Contract, in whole or in part, immediately upon Contractor's default under Section 10.1.

12.3 Contractor's Right to Terminate for Cause. Contractor may terminate the Contract upon Authorized Purchaser's default under Section 10.2.

12.4 Return of Property. Upon termination of the Contract for any reason whatsoever, Contractor shall immediately deliver to Authorized Purchaser all of Authorized Purchaser's property (including without imitation Authorized Purchaser's Confidential Information or any Services for which Authorized Purchaser has made payment in whole or in part) that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such Authorized Purchaser property is expressed or embodied at that time.

12.5 Authorized Purchaser's Right to Suspend the Services.

12.5.1 Authorized Purchaser may suspend portions or all of the Services due to the following causes:

- a) Contractor's default under section 10.1;
- b) Any reason considered to be in the public interest; or
- c) For non-appropriation as set forth in section 12.1 and 16.6.

12.5.2 Authorized Purchaser shall notify Contractor in writing of the effective date and time of the suspension and shall notify Contractor in writing to resume Services.

12.5.3 During suspension Contractor is responsible as follows:

- a) If the suspension occurs due to the reason set forth in Section 12.5.1(a), Contractor shall continue to provide any unexpired warranty coverage and maintain prepaid Service Levels. No single instance of suspension of performance for Contractor's default under 12.5.1(a) may exceed 180 days.

b) If the suspension occurs due to the reasons set forth in Sections 12.5.1(b) or (c), Contractor shall provide warranty coverage for a period of 90 days following the effective date of suspension for any Deliverables accepted prior to the effective date of suspension. Notwithstanding the foregoing, Contractor shall not be obligated to provide warranty period maintenance and support except to the extent such warranty period maintenance and support has been paid in advance. No single instance of suspension of performance under 12.5.1(b) or 12.5.1(c) may extend beyond 30 days after the end of the biennium during which the suspension occurred.

c) If the Services are recommenced after the suspension Contractor shall complete the Services in every respect as though its prosecution had been continuous and without suspension. Due dates for Services shall be extended by the amount of the period of suspension and a reasonable period for Contractor's remobilization not to exceed 90 calendar days.

### **13. Independent Contractor; Taxes and Withholding.**

13.1 Independent Contractor. Contractor shall perform all Services as an independent contractor. Although Authorized Purchaser reserves the right to evaluate the quality of the completed performance, Authorized Purchaser will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

13.2 Declaration and Certification. Contractor by execution of the Contract declares and certifies that (i) its performance of the Services creates no potential or actual conflict of interest as defined by ORS Chapter 244, for Contractor or any Contractor personnel who will perform Services under the Contract, and (ii) in the event that Contractor or its personnel are performing services for the federal government, that no rules or regulations of the agency for which Contractor or its personnel provide services prohibit Contractor or its personnel from providing the Services under the Contract. Contractor also declares and certifies by execution of the Contract that it is not an "officer," "employee," or "agent" of Authorized Purchaser, as those terms are used in ORS 30.265.

13.3 Responsible For Taxes. Contractor shall be responsible for all federal and state taxes applicable to compensation and other payments paid to Contractor under the Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser will not withhold from such compensation and payments any amount to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under the Contract, except as a self-employed individual.



#### **14. Compliance Applicable Law.**

Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

#### **15. Dispute Resolution.**

15.1 Litigation – State Agencies. Any claim, action, suit, or proceeding (collectively, "Claim") between a Authorized Purchaser that is a State agency and Contractor that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion 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. CONTRACTOR BY EXECUTION OF THIS MASTER AGREEMENT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 15.1. In no event shall this Section 15.1 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

15.2 Litigation – Non-State Authorized Purchasers. Any Claim between a non-State agency Authorized Purchaser and Contractor that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the state court for the county of the residence of the Authorized Purchaser; 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. CONTRACTOR BY EXECUTION OF THIS MASTER AGREEMENT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 15.2. In no event shall this Section 15.2 be construed as a waiver by the State of Oregon or any non-State Authorized Purchaser of

any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

15.3 Governing Law. The Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

## **16. Miscellaneous Provisions.**

16.1 Recycling. Contractor shall, to the maximum extent economically feasible in the performance of the Contract, use recycle paper (as defined in ORS 279A.010 (1) (gg)), recycle PETE products (as defined in ORS 279A.010 (1) (hh)), and other recycled plastic resin products and recycled products ("recycled product" is defined in ORS 279A.010(1)(ii).

16.2 Subcontracts and Assignment. Contractor shall not enter into any subcontracts for any of the Services required by the Contract or assign or transfer any of its interest in the Contract without Authorized Purchaser's prior written consent. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of Authorized Purchaser. Authorized Purchaser's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under the Contract.

16.3 Successors and Assigns. The provisions of the Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

16.4 No Third-Party Beneficiaries. The State, Authorized Purchaser and Contractor are the only parties to the Agreement and the Contract and are the only parties entitled to enforce their terms. Nothing in the Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the Contract.

16.5 Funds Available and Authorized. Contractor shall not be compensated for Services performed under the Contract by any other Authorized Purchaser or department of the State of Oregon. Authorized Purchaser believes it has sufficient funds currently available and authorized for expenditure to finance the costs of the Contract within Authorized Purchaser's biennial appropriation or limitation. Contractor understands and agrees that Authorized Purchaser's payment of amounts under the Contract is contingent on Authorized Purchaser receiving appropriations, limitations, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to continue to make payments under the Contract.

16.6 Records Maintenance; Access. Contractor shall maintain all financial records and other records relating to its performance under the Contract in accordance with generally

accepted accounting principles and in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Authorized Purchaser, the State and the federal government and their duly authorized representatives shall have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such records for a minimum of six years, or such longer period as may be required by applicable law, following termination of the Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to the Contract, whichever date is later.

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

16.8 Survival. All rights and obligations shall cease upon termination or expiration of the Contract except for the rights and obligations and declarations set forth in Articles V, VI, VII, VIII, IX, XII, XIV and XVI, and Sections 5, 6, 7, 8, 9, 11, 13.3, 15, 16.3, 16.4, 16.6, 16.8, 16.17, 16.18, and 16.20.

16.9 Time is of the Essence. Contractor agrees that time is of the essence in its performance under the Contract.

16.10 Force Majeure. Neither Authorized Purchaser nor Contractor shall be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control, including without limitation acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war, riots or strikes. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.

16.11 Notices. Except as otherwise expressly provided in the Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery of, facsimile transmission of, or mailing the same, postage prepaid, to Contractor or Authorized Purchaser at the address or number set forth in the Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 16.11. Any communication or notice so addressed and mailed shall be deemed to be given five (5) calendar days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when the transmitting machine generates receipt of the transmission. To be effective against Authorized Purchaser, such facsimile transmission must be confirmed by telephone notice to the Authorized Purchaser Authorized Representative. Any communication or

notice by personal delivery shall be deemed to be given when actually received by the appropriate Authorized Representative.

16.12 Severability. The parties agree that if any term or provision of the Contract 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 shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

16.13 Counterparts. The Contract may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

16.14 Amendments. The Contract may be amended, modified, or supplemented only by a written amendment signed by Authorized Purchaser and Contractor that has been approved by DOJ, if required by applicable law. Any amendment that provides for additional Services may only provide for Services directly related to the scope of Services and Products described in the Agreement, and no amendment shall be effective until all requisite signatures and approvals are obtained.

16.15 Disclosure of Social Security Number. Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax identification number. This number is requested pursuant to ORS 305.385 and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

16.16 Waiver. The failure of either party to enforce any provision of the Contract or the waiver of any violation or nonperformance of the Contract in one instance shall not constitute a waiver by the party of that or any other provision nor shall it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of the Contract shall bind either party unless in writing and signed by both parties and all necessary State of Oregon approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

16.17 Disaster Recovery; Backup. Notwithstanding the provisions of section 16.10, Contractor shall be responsible for providing disaster recovery services if Contractor experiences or suffers a disaster; Contractor shall take all necessary steps to ensure that Authorized Purchaser shall not be denied access to the Services for more than twenty four (24) hours in the event there is a disaster to Contractor data, Authorized Purchaser Data or Contractor Intellectual Property necessary to provide the Subscription Services and the Non-subscription Services. Contractor shall maintain the capability to resume provision of the Services from an alternative location and via an alternative telecommunications route in the event of a disaster that renders Contractor's data center unusable or unavailable. If Contractor fails to restore the Subscription Services and the

Non-subscription Services within twenty four (24) hours of the initial disruption to service, or Contractor declares more than two (2) disasters in any twelve (12) month period, Authorized Purchaser may declare Contractor to be in default of the Contract and Authorized Purchaser may seek alternate services, which would have otherwise been provided under the Contract, from another source. Contractor shall reimburse Authorized Purchaser for all costs reasonably incurred by Authorized Purchaser in obtaining such alternative services, with payment to be made within thirty (30) days of Authorized Purchaser's written request for such payments.

Contractor shall provide off-site storage on a weekly basis of all backup disks, data or materials of any type whatsoever produced in whole or in part in connection with or related to the performance by Contractor of its obligations under the Contract (including without limitation discs, tapes, other storage media, work papers and partial drafts of documentation code).

16.18 Integration. The Contract including the Agreement and its Exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding the Contract.

16.19 No Partnership. The Contract is not intended, and shall not be construed, to create a partnership or joint venture between Authorized Purchaser and Contractor. Nothing in the Contract shall be construed to make Authorized Purchaser and Contractor partners or joint venture participants.

## **EXHIBIT B**

### **SCHEDULE OF SERVICES AND COMPENSATION**

#### **Description of Service**

- a.** Provide secure electronic records management application and hosting and secure transport. Service shall include use of the HP TRIM DoD5015.2 continually compliant software. (The compliant software must be hosted on Contractor's maintained redundant, load balanced, and high-availability infrastructure in an appropriately hardened and secured data center environment that meets the standards of a Tier Two Data Center). All data storage shall be managed such that corrupt data can be recovered in less than 2 hours, and backed up and transported securely to a secure offsite location for disaster recovery. Missing data can be recovered in less than 24 hours, and backed up and transported securely to a secure offsite location for disaster recovery.
- b.** Services shall meet the general requirements listed below and must address attachment size or any other known limits.

The standard Services listed below shall be included in the per user price. Contractor may provide and list additional options.

#### ***Standard Service to include:***

- Use of HP TRIM ERMS licensed software
- ERMS Application configuration and administration set up
- Integration with GroupWise, Outlook and SharePoint
- Project Management
- 24X7 Helpdesk support
- User and administrative training
- User documentation
- Hosting with acceptable storage
- Direct billing to Authorized Purchaser
- Acceptable Service Levels
- Work with the Secretary of State's Business Services Division for fee distribution to the Archives Division for their services in retention schedule preparation, classification structure development and initial application use training, which is in addition to the services now provided for paper records.

#### ***Suggested Additional Services:***

- Additional application integration
- Additional Project Management
- Additional hosting

- Additional user training
- Additional Help Desk Services

***Hosting Solution provides:***

A Tier II or higher Data Center, including, at a minimum:

- Physical, electronic and biometric security which meets the Oregon Department of Administrative Services Standards
- Acceptable availability and scalability for up to 100,000 users
- Windows application servers
- Redundancy built at all levels
- Adequate HVAC cooling to scale to statewide service
- Redundant ISP's with acceptable connectivity and speed
- Freeway and airport accessibility
- 24X7 infrastructure monitoring and support
- Located in a no flood zone
- The data center must be located in a an area that is projected to experience a less than 20% peak ground acceleration as indicated on the Oregon Department of Geology and Mineral Industries 'Earthquake Hazard Maps for Oregon

<http://www.oregongeology.com/sub/publications/gms/gms100.pdf>

***Solution must also include:***

- A costing model which provides economy of scale to lower subscription fees with increased number of users.

**PROPOSED SaaS AND PROPOSERS ABILITY TO EXECUTE**

- The SaaS proposed must be able to manage across multiple repositories.
- The SaaS proposed must be scalable to 100,000 + users.
- The SaaS proposed must be able to be integrated with Novell GroupWise and Microsoft Outlook mail systems as well as Sharepoint.
- The SaaS proposed must support and be compatible with the State's classification and scheduling system and record retention laws.
- The software component of the proposed solution, which will manage electronic records, must be HP TRIM certified against DoD5015.2 and remain certified through the life of the contract.
- The preferred server technology is Windows Application Server, Microsoft or Oracle data base and integration with Microsoft office.

**c. Migration Support/Implementation Plan**

Contractor shall provide a proven set of migration processes and tools to convert existing documents and email to the ERMS SaaS services. The existing Authorized Purchaser's

email services include but are not limited to GroupWise, Lotus Notes, hosted Exchange server, and POP3-based emails.

Contractor shall implement its transition plan for the first pilot agency with at least 1,000 users and 25 offices located across the State including a high level project schedule and roll-out plan. Contractor shall work with the Secretary's Archivist to bring in future agencies once the pilot is successful.

Contractor shall provide optional additional migration services as requested by Authorized Purchaser.

**d. Authorized Purchaser Administrative Capability**

Contractor shall include administrative access to Authorized Purchaser with the following minimum features:

- Authorized Purchaser's administrator(s) responsible for account administration (Move/Add/Change)
- Authorized Purchaser's administrator(s) can request assistance in using the ERMS tool and recovering documents if necessary
- Ad hoc per-user volume & storage usage reporting
- Authorized Purchaser's aggregate storage allocation & current consumption reporting
- Administrative abilities shall be able to be segregated by Authorized Purchaser

**d. Archival and E-Discovery**

Contractor shall meet the State's Archival and Retention rules ([http://arcweb.sos.state.or.us/rules/OARS\\_100/OAR\\_166/166\\_tofc.html](http://arcweb.sos.state.or.us/rules/OARS_100/OAR_166/166_tofc.html)). Services shall include retention and e-discovery capability.

**e. Record Security**

In recognition of the sensitive nature of the information handled by Authorized Purchasers, Contractor shall ensure Authorized Purchaser's records are transported, stored, and accessed in a secure manner. Contractor shall abide by the following:

State's Security Plan and Standards:

[http://www.oregon.gov/DAS/EISPD/ESO/SW\\_Plan\\_Standards.shtml](http://www.oregon.gov/DAS/EISPD/ESO/SW_Plan_Standards.shtml)

State Information Security Policies:

<http://www.oregon.gov/DAS/EISPD/ESO/Policies.shtml>

[http://www.oregon.gov/DAS/EISPD/ESO/Policies.shtml#Policy\\_Set](http://www.oregon.gov/DAS/EISPD/ESO/Policies.shtml#Policy_Set)

Oregon ID Theft Act:

<http://www.oregon.gov/DAS/EISPD/ESO/IDTheft.shtml>



At Authorized Purchaser's request, segregated data storage will be provided.  
*[Describe measures taken to ensure records transported by and stored on Contractor's servers remains unaltered from its original form.]*

Requirements include the following at a minimum:

- Transport of records between Contractor hosting site must be strongly encrypted
- All Authorized Purchaser's access to records at Contractor's site must be strongly encrypted
- Authorized Purchaser's access to records at Contractor's shall be strongly authenticated (e.g. secure token, certificate, PIN, etc.)
  - Prefer to use Authorized Purchaser's domain authentication.
- Access to records at Contractor's only from strongly authenticated users as defined in Enterprise Information Security Standard for the State of Oregon 1.1 "Authentication Standards". Authorized Purchaser's records are protected from unauthorized access from:
  - Contractor's other hosted customers and clients
  - Contractor's business partners and contractors of customers and clients
  - Contractor's administrative personnel
  - Internet users, general public
  - Unauthorized agency employees, contractors, and business partners
  - Unauthorized State of Oregon employees, contractors and business partners

**f. Service Level and Remedies.**

Service availability shall be a minimum of 99.99% measured on a monthly basis.  
 Record retrieval delivery time shall be three minutes or less, 95%, measured on a monthly basis.

Provide 24 hours per day / 7 days per week / 365 days per year service support.

Remedies:

Measure	Performance (Monthly)	Remedy (Credit) per Month
Availability	99.99%	Monthly Fee x # of affected seats
Record Retrieval Time	95%	Monthly Fee x # of affected seats

Contractor shall provide a Statement of Compliance with the Service Level and Remedies identified above.

**g. Other Requirements.**

## **Reporting**

Contractor shall at a minimum provide the following reports:

Usage reports, e.g., who (Agency) is using the ERMS system (sizes, frequencies, etc.)

Storage reports, e.g., who is using what kind of storage.

Status reports, e.g., to measure if service meets SLA.

Billing-related reports, e.g., fee per usage by Agency, departments, etc.

The frequency of reports will be determined by the Secretary and each Authorized Purchaser.

## **Training**

Contractor shall provide at a minimum the following training and associated materials:

Issue escalation related training such as using Proposer's defect tracking system, escalation process, etc.

Billing-related training, e.g., ordering of additional services, resolve billing questions, etc

## **Support**

Contractor shall provide a clearly defined support process that includes at a minimum the following:

1. Support triage model
2. Support request status
3. Service upgrade roadmap
4. User panel
5. Escalation process
6. Personal distribution list capability
7. Contact List
8. Disaster/business continuity capability
9. Migration planning and services, tools, training
10. Overview of Proposer's business (Length of time offering requested services, number and churn rate of clients, migration references)
11. Proposer's operational processes (ISOxxxx, ITIL, etc)
  - a. Configuration & change management
  - b. Network security administration

- c. System administration
  - d. External certification/auditing for infrastructure and ERMS DoD 5015.2 compliance
- 12. Virus protection (including process to keep current in perpetuity)
- 13. email clients and other applications supported
- 14. Browsers supported (for remote access & administrative access)
- 15. Description of datacenter(s), type classification, geographic redundancy, certifications, square footage, ownership, number servers, etc
- 16. Service Performance
  - a. SLA & nonperformance penalties
  - b. Operational Key Performance Metrics (Network/server utilization, etc)
- 17. Authorized Purchaser authentication required for access to accounts
- 18. Service termination
  - a. Clearly defined service termination process
  - b. Record protection plan
- 19. Help Desk
- 20. Information security incident response process

## Pricing

Number of Users	Cost per Month	Monthly Rebate
	per User	
2,000	\$37.02	\$8.76
3,000	\$37.02	\$8.76
4,000	\$29.74	\$4.87
5,000	\$26.66	\$2.92
6,000	\$24.06	
7,000	\$21.61	
8,000	\$19.62	
9,000	\$18.81	
10,000	\$17.53	
11,000	\$16.55	
12,000	\$15.71	
13,000	\$14.68	
14,000	\$14.02	
15,000	\$13.55	
16,000	\$12.54	
17,000	\$11.96	
18,000	\$11.44	
19,000	\$10.99	
20,000	\$10.54	

## EXHIBIT C

### INSURANCE

A. **REQUIRED INSURANCE.** Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit C prior to performing under the Agreement or any Contract and shall maintain it in full force and at its own expense throughout the duration of the Agreement and any Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to the State.

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. **PROFESSIONAL LIABILITY**

☒ **Required by State**      ☐ **Not required by State**

**Professional Liability.** Contractor shall obtain and maintain at its own expenses for the duration of the Agreement and any Contract. Professional Liability Insurance with a combined single limit, or the equivalent, as set forth below. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under the Agreement and any Contract. Full limits can be obtained by the purchase of one primary policy or a primary and excess policy as needed to provide the full policy limits. Such policy shall include coverage for losses arising from the breach of information security or cyber liability (including Technology Errors & Omissions, Network Security and Privacy Liability and Media Liability), whether combined with the Professional Liability policy or placed as a separate policy, but carrying the same limits of liability. Such coverage shall insure damage caused by error, omission, or negligent acts, including all prior acts without limitation, related to the professional services to be provided under the Agreement and any Contract. The Policy shall be amended to include Independent Contractors providing Professional Services on behalf of or at the direction of Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. Further, coverage shall be afforded for fraudulent acts, misappropriation of trade secrets, internet professional services, computer attacks, personal injury, regulatory actions, known wrongful acts, contractual liability, privacy policy, and insured versus insured.

☒ Per occurrence limit for any single claimant:

July 1, 2010 to June 30, 2011:	\$1,700,000.
July 1, 2011 to June 30, 2012:	\$1,800,000.

July 1, 2012 to June 30, 2013:	\$1,900,000.
July 1, 2013 to June 30, 2014:	\$2,000,000.
July 1, 2014 to June 30, 2015:	\$2,100,000.

July 1, 2015 and thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

Per occurrence limit for any number of claimants

July 1, 2010 to June 30, 2011:	\$3,700,000.
July 1, 2011 to June 30, 2012:	\$3,900,000.
July 1, 2012 to June 30, 2013:	\$4,100,000.
July 1, 2013 to June 30, 2014:	\$4,300,000.
July 1, 2014 to June 30, 2015:	\$4,500,000.

July 1, 2015 and thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

iii. COMMERCIAL GENERAL LIABILITY.

☒ **Required by the State**    ☐ **Not required by the State**

**Commercial General Liability.** Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the State:

☒ Per occurrence limit for any single claimant:

July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.

July 1, 2015 and thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for any number of claimants:

July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.

July 1, 2015 and thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

**AND**

**Property Damage:**

☒ Per occurrence limit for any single claimant:

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for any number of claimants:

From January 1, 2010, and every year thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, 5 (Senate Bill 311).

iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

☒ **Required by the State**    ☐ **Not required by the State**

**Automobile Liability.** Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Contractor shall provide proof of insurance of not less than the following amounts as determined by the State:

☒ Per occurrence limit for any single claimant:

July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.

July 1, 2015 and thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for any number of claimants:

July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.

July 1, 2015 and thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

**AND**

**Property Damage:**

☒ Per occurrence limit for any single claimant:

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for any number of claimants:

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

**v. EMPLOYERS' LIABILITY.**

☐ **Required by the State** ☒ **Not required by the State**

If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall obtain employers' liability insurance coverage. Contractor shall provide proof of insurance of not less than the following amounts as determined by the State:

☐ *\$(the State to enter amount)* Per occurrence limit for any single claimant; and  
*\$(the State to enter amount)* Per occurrence limit for any number of claimants

**OR**

☐ Per occurrence limit for any single claimant:

July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.

July 1, 2015 and thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for any number of claimants:

July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.



July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.

July 1, 2015 and thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

vi. POLLUTION LIABILITY.

☐ **Required by the State** ☒ **Not required by the State**

Pollution Liability Insurance covering Contractor's liability for bodily injury, property damage and environmental damage resulting from either sudden or gradual accidental pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under the Agreement or any Contract. Combined single limit per occurrence shall not be less than \_\_\_\_\_. Annual aggregate limit shall not be less than \_\_\_\_\_.

B. ADDITIONAL INSURED.

The Commercial General Liability insurance and Automobile Liability insurance required under the Agreement shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under the Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. "TAIL" COVERAGE.

If any of the required professional liability insurance is on a "claims made" basis, Contractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the Effective Date of the Agreement, for a minimum of 24 months following the later of (i) Contractor's completion and the Authorized Purchaser's acceptance of all Services required under any Contract, or, (ii) The expiration of all warranty periods provided under any Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under the Agreement. Contractor shall provide to the State, upon request, certification of the coverage required under this section.

D. NOTICE OF CANCELLATION OR CHANGE.

There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without sixty (60) days' written notice from this Contractor or its insurer(s) to the State. Any failure to comply with the reporting

provisions of this clause shall constitute a material breach of the Agreement and the Contract and shall be grounds for immediate termination of the Agreement or any Contract by the State or an Authorized Purchaser.

#### E. CERTIFICATE(S) OF INSURANCE.

Contractor shall provide to the State Certificate(s) of Insurance for all required insurance before performing any Services required under any Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

## EXHIBIT D

### SUBSCRIPTION SERVICES CONTRACT

This Subscription Services Contract Number \_\_\_\_\_ (“Contract”) is effective \_\_\_\_\_ ( “Contract Effective Date”) between \_\_\_\_\_ (“Contractor”) and \_\_\_\_\_ (“Authorized Purchaser”).

THIS CONTRACT IS ENTERED INTO PURSUANT TO AGREEMENT # 0486 AND IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH THEREIN. THE TERMS AND CONDITIONS OF THE AGREEMENT APPLY TO THIS CONTRACT AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

#### 1. Subscription Services.

The Contractor will provide to the Authorized Purchaser all required services listed in Exhibit B which includes: access to and use of the HP TRIM application, software and data hosting and storage, and helpdesk support services. The Archives Division will provide the training for using HP TRIM. The Contractor may provide training to other software integrations.

#### 2. Subscription Fee and Payment Schedule.

Based on the total monthly fee and number of Users listed below, Authorized Purchaser shall pay Contractor \_\_\_\_\_ payable in \_\_\_\_\_ monthly installments commencing upon Authorized Purchaser’s acceptance of the Subscription Services and as further specified in Section 3, below.

*[Insert a chart setting out software applications, whether maintenance, support and upgrade protection are included or separate, number of users (or other basis for charges), periodic fee for each line item, the fee payment schedule, the term for each line item and any other considerations or limitations.]*

Monthly Fee (\$) Per User	Number of Users

Invoices shall be issued on the \_\_\_\_\_ day of the month following the calendar month in which the Subscription Services were provided. All undisputed, timely and valid invoices are due in full \_\_\_\_\_ days after receipt by Authorized Purchaser. The initial pricing in this Contract is and shall remain valid for the Initial Period, defined in Section 6 below, and through the second

(2<sup>nd</sup>) Renewal Period, defined in Section 6 below.

Invoices shall be provided to the Authorized Purchaser in electronic or paper format as follows:

**Authorized Purchaser Name:**

Contact Name:

Address:

Phone:

Email Address:

**3. Additional Users.**

During the term of this Contract, Authorized Purchaser may add additional Users, above the initial number of Users specified in Section 2, to the Subscription Services by executing an amendment to this Contract. Based on the amendment, the monthly installment fee will increase based on the table below for each additional User for the remaining term of the Initial Period and through the second (2<sup>nd</sup>) Renewal Period commencing on the day the additional Users are specified by Authorized Purchaser.

Monthly Fee (\$) Per User	Number of Additional Users
	<50
	50 to 100
	101 to 250
	251 to 500
	>501

**4. Authorized Purchaser Acceptance.**

Contractor shall, during or before the initial implementation phase, develop and recommend to Authorized Purchaser an acceptance test that is reasonably constructed to test the ability of the Subscription Services and associated Software Applications, as implemented by Contractor, to produce the results and other Deliverables specified in this Contract. Authorized Purchaser may accept the proposed acceptance test as recommended or modify it as Authorized Purchaser deems reasonable. Contractor shall provide Authorized Purchaser with access to the Subscription Services on or before \_\_\_\_\_. On the transition date,

Contractor shall assume responsibility for providing ongoing Subscription Services.

Upon the conclusion of any consecutive forty-five (45) day period of production processing from the transition date, when all Service Levels set out below have been met successfully, the Subscription Services shall be deemed accepted, and Authorized Purchaser will notify Contractor in writing. Nothing contained in this Section 4 or any other provision of this Contract shall be deemed to prevent Authorized Purchaser from using any portion of the Subscription Services in a live environment for productive processing, and any such use shall not alter, amend or modify any of Contractor's obligations pursuant to the Contract.

**5. Period of Performance.**

The period of performance of this Contract shall commence on the Contract Effective Date and shall continue for a period of \_\_\_\_\_ months plus the interim period between the effective date and the date of acceptance (the "Initial Period"). Thereafter, Authorized Purchaser may renew this Contract twice for additional periods (each a "Renewal Period"), subject to the terms of the Agreement.

Authorized Purchaser may terminate this Contract by providing Contractor with a notice of termination sixty (60) days prior to the termination date.

**6. Consulting, Implementation, Training and/or Support Services.**

Contractor shall provide the consulting, implementation, training and/or support services related to the Subscription Services as set forth in Section 2.

**7. Security Procedures.**

Contractor shall define certain policies and procedures that it shall have in place in order to provide the level of security associated with the Subscription Services and with the Service Levels set forth in Section 11. These policies and procedures shall be updated by Contractor from time to time to reflect emerging technologies, business practices and Internet-related issues. Contractor shall attach a copy of these policies and procedures to this Contract as Attachment 1. Contractor shall provide written notice to Authorized Purchaser of any changes made to its security policies and procedures within ten (10) days of such changes, and Attachment 1 shall be updated accordingly.

**8. Desktop Specifications.**

Contractor warrants that the minimum technical requirements for access to and operation of the Software are: \_\_\_\_\_. If future releases of the Software require use of newer versions of these web browsers, Contractor will provide a minimum of one hundred and eighty (180) days' written notice to Authorized Purchaser prior to the general release of that Software version.

Additional technical requirements for complete operation of all functionality of the Software include: \_\_\_\_\_.

**9. Transition.**

Contractor shall provide a transition plan that is approved by Authorized Purchaser. Subscription Services shall be transitioned and in production, as accepted by Authorized Purchaser, within \_\_\_\_\_ calendar days from the Schedule Effective Date.

**10. Transition Remedy.**

In the event that Contractor fails to meet the date for the completion of the transition into production of the Subscription Services, Contractor shall credit Authorized Purchaser one percent (1%) of the monthly Service fees for every business day the transition is late. If Contractor misses the target date by more than thirty days (30) days, Contractor shall be deemed to be in material breach of the Agreement.

If Authorized Purchaser does not meet its obligations as identified in the transition plan provided by Contractor and Authorized Purchaser is the sole cause of a delay in the project, the transition milestone target dates shall be extended for the same amount of time as the delay. Contractor shall promptly notify the Authorized Purchaser Program Manager, in writing, of any delay in the project schedule as a result of Authorized Purchaser's failure to meet any of its obligations identified above. If Contractor fails to notify Authorized Purchaser of any such Authorized Purchaser failure to meet its obligations, Authorized Purchaser shall be conclusively presumed under the Contract to have met its obligations, and consequently, Contractor shall not be entitled to rely on such delay to excuse it from meeting the milestone target dates.

**11. Service Levels and Remedies.**

**11.1 Security Service Level.**

The required security processes may include, but are not limited to, the following:

- (i) Contractor shall have staff on duty and at its site 24x7 and capable of identifying, categorizing, and responding to a security incident.
- (ii) Contractor shall notify Authorized Purchaser of any new potential security vulnerability within four (4) hours of discovery. This notification shall include the probable risks associated with the vulnerability.
- (iii) Contractor shall implement a security fix across the application within four (4) hours of approval from Authorized Purchaser.

- (iv) Contractor shall notify the Authorized Purchaser Program Manager within fifteen (15) minutes if Contractor believes that an attack is in process.
- (v) Contractor shall shut down ALL access to the Software or any component of it associated with the Subscription Services within fifteen (15) minutes upon request of the Authorized Purchaser Program Manager or officer of Authorized Purchaser.
- (vi) Contractor shall assist Authorized Purchaser in preparing written responses to audit requirements or findings without charge.
- (vii) Contractor represents and warrants that it has successfully passed a SAS 70 Type II Audit within the past twelve (12) months and shall provide the documented audit results to Authorized Purchaser no later than fifteen (15) days after execution of this Contract.
- (viii) Contractor must conduct and pass a SAS 70 Type II Audit every twelve (12) months during the term of this Contract. Failure by Contractor to pass the audit or to provide the audit results to Authorized Purchaser within fifteen (15) days after receiving the results from the auditor shall constitute a material breach of the Agreement.

#### 11.2 System Response Time Service Level.

Contractor represents and warrants that ninety-five percent (95%) of all transactions shall process at no more than one (1) second; no single transaction shall take longer than five (5) seconds to process. Authorized Purchaser retains the option of using a third party service to validate the performance of Contractor's response times.

If Contractor's system response times fall below the warranted level for two (2) or more consecutive weeks, Authorized Purchaser shall receive service credits in the amount of twenty five percent (25 %) of the Subscription Services fees for that month. If Contractor's system response times fall below the warranted level for six (6) out of eight (8) consecutive weeks, Contractor shall be considered to be in default, and Authorized Purchaser may terminate the Agreement without penalty.

Contractor represents and warrants that the above performance Service Levels shall be valid with up to 100,000 Users using the application at any given time.

### 11.3 Subscription Services Availability Service Level.

Contractor agrees that the Subscription Services shall be available to Authorized Purchaser at least 99.7% of the time each calendar month, measured on a 7 x 24 basis (7 days a week, 24 hours per day).

If the Subscription Services availability percentage falls below 99.7% in any month, Authorized Purchaser shall be entitled to a credit on that month's bill for Subscription Services according to the table below.

Availability Percentage	Percentage of Credit
99.60% to 99.69%	10%
99.50% to 99.59%	20%
99.0% to 99.49%	30%
97.0% to 98.99%	50%
Below 97.00%	75%

### 11.4 Performance and Availability Scalability.

Contractor represents and warrants that the performance and availability Service Levels shall be valid and applicable with a concurrent User increase of up to \_\_\_\_\_ Users.

### 11.5 Notifications to Authorized Purchaser.

Contractor shall provide proactive notifications to Authorized Purchaser regarding scheduled system-maintenance downtime and system upgrades and enhancements. Contractor shall provide Authorized Purchaser with at least seven (7) calendar days' prior written notice of any scheduled outages; such notices shall include the date of the outage and the start and stop times of the outage.

### 11.6 Additional Environment.

Contractor will provide an additional environment at no additional charge for Authorized Purchaser's testing and/or training purposes, without limitation. Authorized Purchaser agrees not to use the additional environment for production purposes.



#### 11.7 Support and Error Resolution.

Contractor shall establish and maintain the organization and processes necessary to provide support and error-resolution services to Authorized Purchaser. Contractor shall provide support and error-resolution services on a twenty-four (24) hours a day, seven (7) days a week basis via telephone from 8:00 a.m. to 6:00 p.m. in all time zones , with ninety-eight percent (98%) of calls picked up within two (2) rings, and pager service in all other hours, with a call back within five (5) minutes.

Upon receipt of telephone or written notice from the Authorized Purchaser specifying a problem, and upon receipt of such additional information as Contractor may request, Contractor shall respond as described below to resolve reported and reproducible errors in the Subscription Services or SaaS Software, so that the application operates as specified in this Contract. Contractor shall determine the priority level in accordance with the following protocols:

- (i) **SEVERITY 1 – CRITICAL BUSINESS IMPACT.** The production use of the Subscription Services is stopped or so severely impacted that the Authorized Purchaser cannot reasonably continue work; requires round-the-clock attention until the problem is resolved (a “Severity 1 Error”).
  - a. Contractor shall begin work on the error within fifteen (15) minutes of notification;
  - b. Contractor shall engage development staff until the problem is circumvented or corrected; and
  - c. Contractor shall provide Authorized Purchaser with ongoing communication on the status of the problem resolution.
- (ii) **SEVERITY 2 – SIGNIFICANT BUSINESS IMPACT.** A high-impact problem is affecting Service Levels and/or materially impacting Authorized Purchaser’s use of the Subscription Services. Problem resolution shall be initiated within sixty (60) minutes, and the resolution of these problems requires serious and sustained attention during normal business hours (8:00 am to 5:00 pm, Pacific time, Monday through Friday, exclusive of State holidays) until the problems are circumvented or corrected (a “Severity 2 Error”).
  - a. Contractor shall begin work on the error within sixty (60) minutes of notification;

- b. Contractor shall engage development staff until the problem is circumvented or corrected; and
  - c. Contractor shall provide Authorized Purchaser with ongoing communication on the status of the problem resolution.
- (iii) **SEVERITY 3 – SOME BUSINESS IMPACT.** This includes problems of general work-queue type and that do not come within the definitions of Severity 1 Error or Severity 2 Error. These problems shall be addressed after Severity 1 Errors and Severity 2 Errors have been corrected and may be pursued during normal business hours on a resources-available basis (a “Severity 3 Error”).
  - a. Contractor shall begin work on the error within one (1) day of notification; and
  - b. Contractor shall engage development staff to provide a workaround and to resolve the problem as soon as possible after notification by Authorized Purchaser.
- (iv) **SEVERITY 4 – MINIMUM BUSINESS IMPACT.** Authorized Purchaser requests information, an enhancement, or documentation clarification regarding the Subscription Services or SaaS Software but there is no impact on the operation of the Subscription Services or SaaS Software. The implementation or production use of the Subscription Services or SaaS Software is continuing and there is no work being impeded at the time (a “Severity 4 Error”).
  - a. Contractor shall provide a response regarding the requested information or documentation clarification within two (2) days of notification by Authorized Purchaser; and
  - b. Contractor shall consider enhancements for inclusion in a subsequent update to the Subscription Services, SaaS Software or Documentation.

**12. Termination and Transition Assistance.**

If this Contract is terminated, the procedure shall be charted as follows:

Date of Termination	Amount(s) due and owing as of this date	Termination Assistance begins/ends on _____

**BY EXECUTING THIS CONTRACT, THE PARTIES AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.**

AUTHORIZED PURCHASER

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

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

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

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

CONTRACTOR

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

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

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

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

## EXHIBIT E

### NON-SUBSCRIPTION SERVICES CONTRACT

This Non-Subscription Services Contract Number \_\_\_\_ (“Contract”) is effective \_\_\_\_\_ ( “Contract Effective Date”) between \_\_\_\_\_ (“Contractor”) and \_\_\_\_\_ (“Authorized Purchaser”).

THIS CONTRACT IS ENTERED INTO PURSUANT TO AGREEMENT # 0486 AND IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH THEREIN. THE TERMS AND CONDITIONS OF THE AGREEMENT APPLY TO THIS CONTRACT AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

This Contract addresses the specific terms and conditions relating to the Non-subscription Services to be provided by Contractor:

1. Services to be performed:
  - 1.1. Description of Non-subscription Services – *All services in addition to those listed in Exhibit B section b « Standard Services ».*
  - 1.2. Contractor’s Responsibilities and Tasks
  - 1.3. Transition Process, Timeline and Milestones
  - 1.4. Deliverables and Due Dates
  - 1.5. Acceptance Specifications
  - 1.6. Service Levels - Set forth any Service Levels applicable to the Non-subscription Services
  - 1.7. Duration of Project or Ongoing Services
2. Term of the Contract:
3. Sites to be Supported:
4. Pricing: Specify pricing for all Non-subscription Services incorporating all pricing options as appropriate.
5. Reports to be Provided:
6. Invoicing Requirements:
7. Authorized Purchaser Responsibilities:

8. Other Specifications:

9. Project Managers: - All contact persons

Authorized Purchaser Project Manager

Contractor Project Manager

Name:

Name:

Phone Number:

Phone Number:

E-mail:

E-mail:

Address:

Address:

**BY EXECUTING THIS CONTRACT, THE PARTIES AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.**

CONTRACTOR

AUTHORIZED PURCHASER

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

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

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

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

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

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

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

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

**EXHIBIT F**  
**VCAF REPORT**

## **EXHIBIT G**

### **CONTRACTOR DATA AND TAX CERTIFICATION**

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620; (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the supplied Contractor data is true and accurate.

Federal Tax Number \_\_\_\_\_

Oregon Tax Number \_\_\_\_\_

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

## **EXHIBIT H**

### **CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a professional corporation.)

Contractor certifies he/she meets the following standards:

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. (Please check four or more of the following:)
  - A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
  - B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.
  - C. Telephone listing is used for the business that is separate from the personal residence listing.
  - D. Labor or services are performed only pursuant to written contracts.
  - E. Labor or services are performed for two or more different persons within a period of one year.
  - F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_



**EXHIBIT I**  
**REQUEST FOR PROPOSAL**  
**RFP #102-1752-10**

**EXHIBIT J**

**CONTRACTOR'S PROPOSAL**

*[Include price proposal]*



# City of Oregon City

625 Center Street  
Oregon City, OR 97045  
503-657-0891

## Staff Report

File Number: PUB 17-008

**Agenda Date:** 6/7/2017

**Status:** Consent Agenda

**To:** City Commission

**Agenda #:** 8c.

**From:** Public Works Director John Lewis

**File Type:** Public Works  
Item

### **SUBJECT:**

Public Improvement Contract with Telfer Pavement Technologies, LLC for the 2017 Oregon City Preventive Pavement Maintenance Type III Micro-Surfacing Project

### **RECOMMENDED ACTION (Motion):**

Award the bid and authorize the City Manager to execute the Contract Agreement in the amount of \$116,400.20 with Telfer Pavement Technologies, LLC to provide construction services to complete the 2017 Oregon City Preventive Pavement Maintenance Type III Micro-Surfacing project (CI 17-003).

### **BACKGROUND:**

In accordance with City and State contracting procedures, ORS 279A.210, an invitation to bid was solicited from qualified contractors for the 2017 Oregon City Preventive Pavement Maintenance Type III Micro-Surfacing project as a Joint Cooperative Procurement with the City of Hillsboro, acting as the administrative contracting agency, and the City of Sherwood. The invitation to bid was published on the City of Hillsboro's website on April 20, 2017 and in the Portland Daily Journal of Commerce on April 21, 2017.

The work authorized by this contract is funded through the City's Pavement Maintenance Utility Fee (PMUF) which is used to administer the Pavement Maintenance Program and is a necessary component of the City's annual street maintenance commitment. The condition of these streets is fair, but all the streets show signs of age through limited pavement cracking and rough surfaces.

The micro-surfacing treatment, consisting of a mixture of dense-graded crushed fine aggregate, polymer modified emulsified asphalt, mineral filler, break control additives and water, fills existing pavement surface defects and extends the life of the road by an estimated 5 to 7 years. Type III micro-surfacing treatment contains a larger aggregate size and is used for heavily traveled roads. This mixture can be applied thicker than a slurry seal, and the curing process takes less than an hour. Without this treatment, these cracks and rough surfaces will become more porous allowing water to compromise the subgrade, and causing the road section to fail.

The contractor will apply approximately 11,541 square yards of micro-surfacing material on Beaver Creek Road from Fir Street to Highway 213 and on 9th Street from McLoughlin Boulevard to Railroad Avenue. The work includes street preparation, neighborhood

notification, traffic control, material delivery, material application and final project cleanup. The work is set to begin no earlier than July 5, 2017 and shall be at substantial completion by September 1, 2017. This Joint Cooperative Procurement, used to solicit qualified contractors, helped reduce staff time and gain a greater economy of scale. On Thursday, May 4, 2017, the three participating cities received the following two bids for the total work of all three cities:

Telfer Pavement Technologies, LLC	\$369,155.85
VSS International	\$381,800.00

Oregon City's estimated project cost based on the specific quantities needed to complete our project is \$116,400.20.

**BUDGET IMPACT:**

Amount: \$116,400.20

FY(s): 2017-18

Funding Source: Pavement Maintenance Utility Fee

## **SECTION IIIA**

### **CONTRACT AGREEMENT**

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, between the CITY OF OREGON CITY ("CITY"), acting by and through the City Commission and TELFER PAVEMENT TECHNOLOGIES, LCC ("CONTRACTOR").

Witnesseth, that the CONTRACTOR and the CITY, for the considerations stated herein, agree as follows:

#### **ARTICLE I - Scope of Work**

The CONTRACTOR hereby agrees to furnish all of the materials, equipment and labor necessary, and to perform all of the work for the project entitled: **2017 OREGON CITY PREVENTIVE PAVEMENT MAINTENANCE TYPE III MICRO-SURFACING PROJECT** in accordance with the contract documents which are hereby made a part of this agreement.

The contract documents consist of:

Invitation to Bid Scope of Work Instructions to Bidders Bid Proposal and Bid Schedule Compliance with ORS 279C.840 Resident Bidder Status Certification of Drug Testing Program Non-Collusion Statement Asbestos Certification Registrations Certification of Non-Discrimination Certification of Compliance with Tax Law Bidder Responsibility Form Bid Bond First Tier Subcontractor Disclosure Form Customer Service Acknowledgment Form Contract Agreement Oregon City Public Improvement Standard Conditions	Statutory Conditions to Contract Agreement Performance Bond Payment Bond State of Oregon Statutory Public Works Bond General Conditions Prevailing Wage Rates for Public Works Contracts in Oregon dated January 1, 2017 Prevailing Wage Apprenticeship Rates dated April 1, 2017 Prevailing Wage Rate Amendment dated April 1, 2017 Definitions of Covered Occupations for Public Works Contracts in Oregon dated January 1, 2016 Special Provisions Contract Drawings City of Oregon City Standard Details Technical Specifications 2015 Oregon Standard Specifications for Construction (ODOT and APWA) as referenced by these documents Addenda: None All items included within these Contract Documents.
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The order of items cited above does not constitute an order of precedence different than that established in the special or standard specifications. Equivalent titles, which may be substituted for the above listed items, are included as if specifically named.

#### **ARTICLE II - Time of Completion**

The project shall be complete within 58 days from the Beginning of Contract Time as identified in 00180.50(c) of the Special Provisions, more specifically established as September 1, 2017.

#### **ARTICLE III – Contract Amount**

The Contract Amount for the work covered by this Agreement is estimated to be **One hundred sixteen thousand four hundred and 20/100 dollars (\$116, 400.20).**

**ARTICLE IV - Warranty and Quality of Work**

**In addition to all other warranties, express or implied, that are part of this Agreement, the Contractor expressly warrants to the City for a period of one year from acceptance of the work by the City that all materials and equipment furnished under this contract will be new, unless otherwise specified, and that the work will be of good quality, free from faults and defects and in conformance with the City's specifications. Work that does not conform to these standards shall be considered defective.**

Contractor shall, at its own expense, make good and repair any and all defects arising from faulty workmanship or materials, if the defective work is discovered within the one-year warranty period and notice thereof is given to the Contractor within 60 days after the expiration of the warranty period. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used to repair the defect.

In witness whereof, the parties hereto have executed this agreement, the day and year first above written.

**CITY OF OREGON CITY**

**TELFER PAVEMENT TECHNOLOGIES, LLC**

by: \_\_\_\_\_  
Anthony J. Konkol III  
City Manager

\_\_\_\_\_  
Printed Name

by: \_\_\_\_\_  
Authorized signature

by: \_\_\_\_\_  
John M. Lewis, P.E.  
Public Works Director

\_\_\_\_\_  
Title

Federal Taxpayer ID Number:

47-3748889

Approved as to Legal Sufficiency:

Address:

By: \_\_\_\_\_  
City Attorney

4522 Parker Avenue, Suite 350

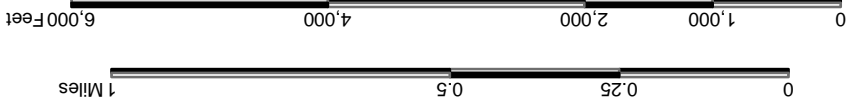
McClellan, CA 95652

City Commission Award Date:

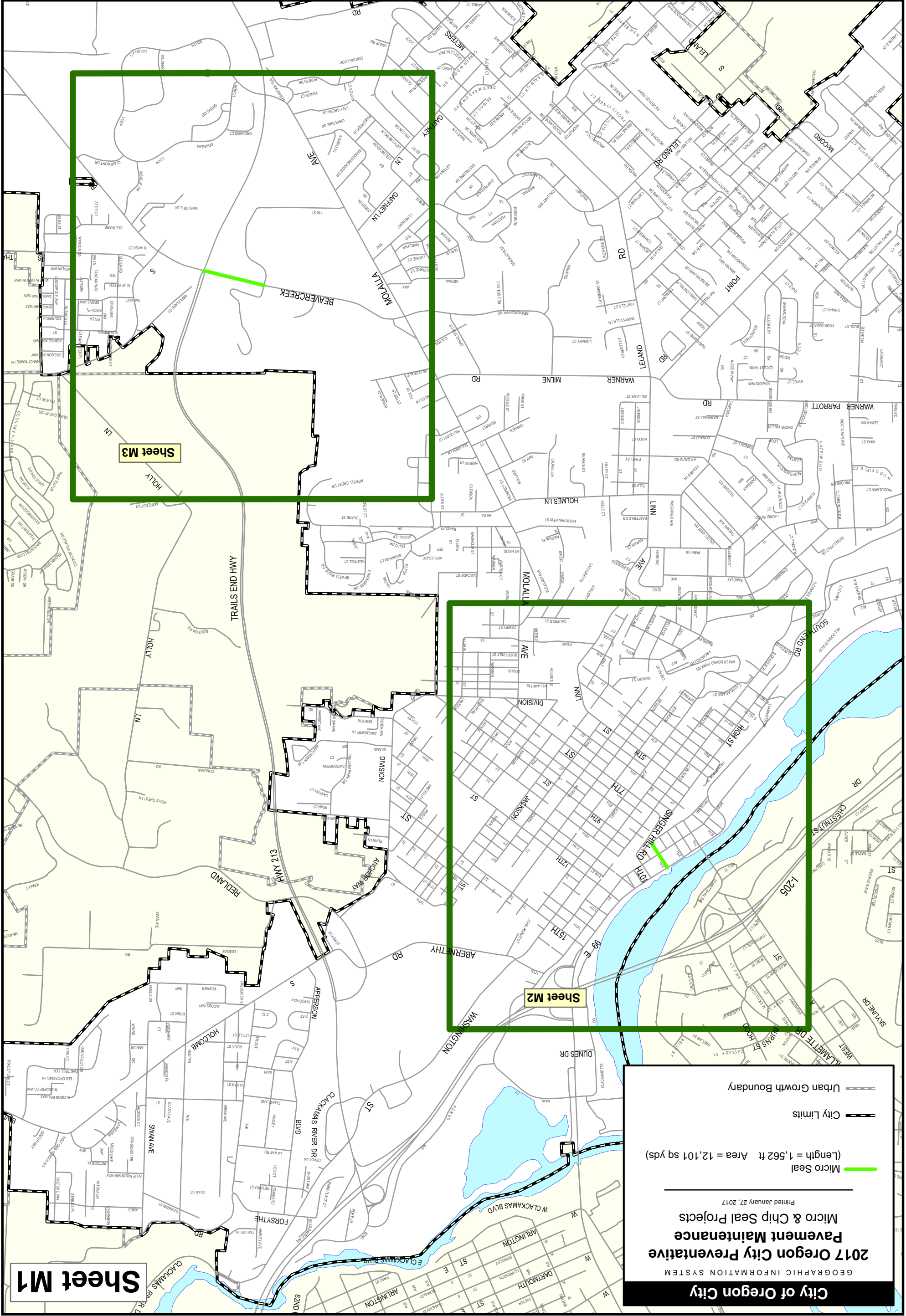
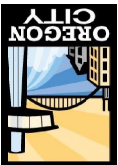
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The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, or surveying purposes. Notification of any errors is appreciated.

Please recycle with colored office grade paper.



City of Oregon City  
P.O. Box 3040  
625 Center St  
Oregon City, OR 97045  
503-657-0891 phone  
503-657-6629 fax  
www.orcity.org



City of Oregon City

Geographic Information System

2017 Oregon City Preventative Pavement Maintenance Micro & Chip Seal Projects

Printed January 27, 2017

Micro Seal

(Length = 1,562 ft Area = 12,101 sq yds)

City Limits

Urban Growth Boundary

Sheet M1

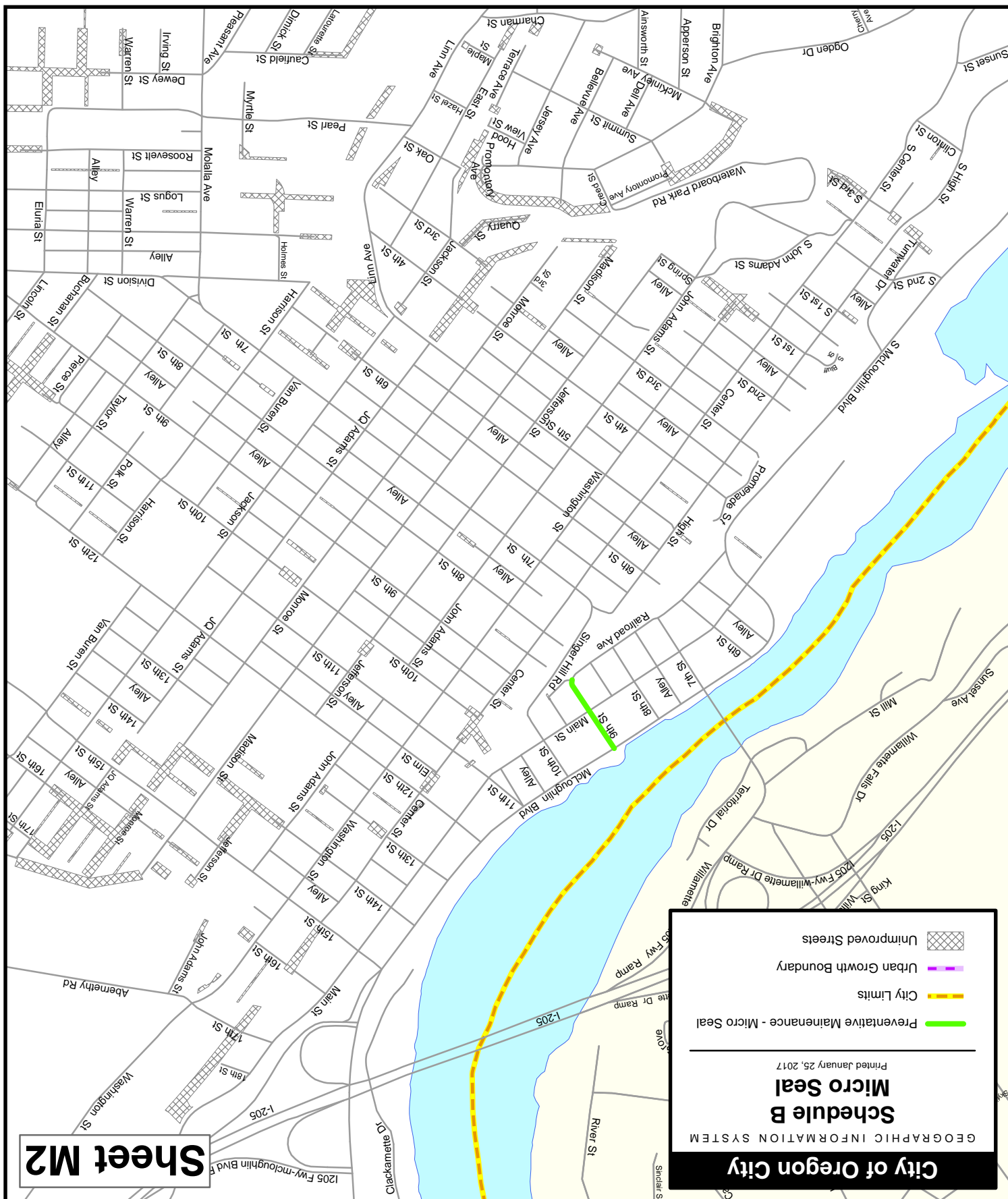
Sheet M2

Sheet M3





City of Oregon City  
P.O. Box 3040  
625 Center St  
Oregon City, OR 97045  
503-657-0891 phone  
503-657-6629 fax  
www.orcity.org









# City of Oregon City

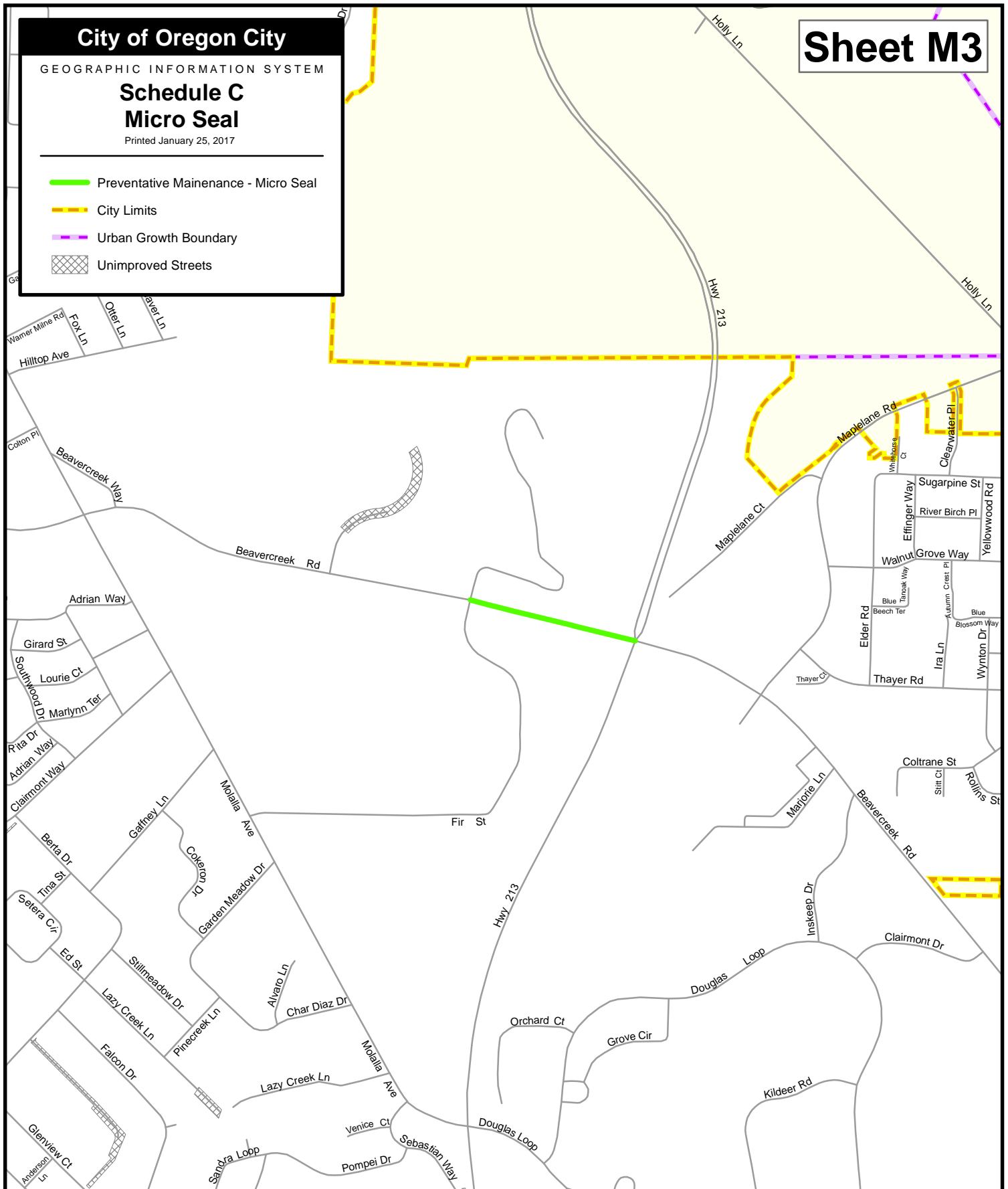
GEOGRAPHIC INFORMATION SYSTEM

## Schedule C Micro Seal

Printed January 25, 2017

# Sheet M3

-  Preventative Maintenance - Micro Seal
-  City Limits
-  Urban Growth Boundary
-  Unimproved Streets



The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, or surveying purposes. Notification of any errors is appreciated.

Please recycle with colored office grade paper.



0 250 500 1,000 1,500 Feet

City of Oregon City  
P.O. Box 3040  
625 Center St  
Oregon City, OR 97045  
503-657-0891 phone  
503-657-6629 fax  
[www.oregoncity.org](http://www.oregoncity.org)



[illegible]



# City of Oregon City

625 Center Street  
Oregon City, OR 97045  
503-657-0891

## Staff Report

File Number: 17-338

**Agenda Date:** 6/7/2017

**Status:** Consent Agenda

**To:** City Commission

**Agenda #:** 8d.

**From:** Public Works Director John Lewis

**File Type:** Report

### **SUBJECT:**

Amendment No. 2 of Personal Services Agreement (PS 17-001) with Geotechnical Resources, Inc., to Provide Geotechnical Services for Mitigation Recommendations and Monitoring related to Trillium Park Drive Landslide

### **RECOMMENDED ACTION (Motion):**

Approve Amendment No. 2 of Personal Services Agreement (PS 17-001) between the City and Geotechnical Resources, Inc., to provide geotechnical services for mitigation recommendations and monitoring related to Trillium Park Drive Landslide

### **BACKGROUND:**

Following a period of prolonged, intense precipitation in February 2017, there was land movement in the area of a deep seated landslide in Trillium Park Drive near Canyon Court. On February 16, 2017, the City's water line pulled apart and damage occurred to the asphalt pavement in Trillium Park Drive. The water line was capped off and abandoned through the landslide area and a section of Trillium Park Drive was closed from Canyon Court to Swordfern Court.

On March 13, 2017, the City executed a personal services agreement with Geotechnical Resources, Inc. (GRI) to provide geotechnical services to monitor, evaluate surface conditions, make preliminary findings concerning the slope stability hazards at the site and develop recommendations to assist the City with short- and long-term mitigation options of the landslide with respect to public improvements. As a result of GRI's initial landslide evaluation and recommendations, on May 3, 2017, the City executed Amendment No. 1 to install three inclinometers with piezometers to assist with the long-term monitoring of the public infrastructure within the City's rights-of-way. For reference purposes, an inclinometer measures magnitude, rate and direction of landslide movement and piezometer measures ground water level. GRI's initial evaluation included the determination that the landslide responds to high ground water levels in the area.

This Amendment No. 2 is for a fourth inclinometer with piezometer. After GRI provided their draft findings, evaluation of the landslide, and long-term monitoring recommendation, it was determined that a fourth inclinometer with piezometer would provide a long-term benefit for monitoring the public infrastructure in Swordfern Court.

The proposed four inclinometers with piezometers will be located in the following four

approximate locations:

- In Canyon Court near property at 13776 Canyon Court (Amendment No. 1)
- In Trillium Park Drive midway between Canyon Court and property at 17346 Trillium Park Drive (Amendment No. 1)
- In Swordfern Court near the end of the cul-de-sac (Amendment No. 2)
- In Wake Robin Circle near property at 17405 Wake Robin Circle (Amendment No. 1)

**BUDGET IMPACT:**

Amount: \$12,875 Amendment No. 2

FY(s): 2016-17

Funding Source:

25% Water Fund 510-551-6006

25% Street Fund 260-526-6006

25% Sewer Fund 520-552-6006

25% Storm Fund 530-553-6006

**CITY OF OREGON CITY**  
**Amendment No. 2 to Personal Services Agreement**

**Trillium Park Drive Slide Monitoring (PS 17-001)**

This is an Amendment to the Personal Services Agreement by and between the City of Oregon City (hereinafter City), and **Geotechnical Resources, Inc.**, hereinafter called "Consultant," which was previously entered into on **March 13, 2017** ("Contract") for **Trillium Park Drive Slide Monitoring**; and

Whereas, the parties wish to amend the Contract as set forth below:

WITNESSETH:

1. The **Scope of Work** is hereby amended as follows:

The Consultant shall perform additional work as outlined in attached Exhibit A.

2. The **Duration of Contract** is hereby amended as follows:

No changes.

3. The **Payment Provisions** are hereby amended as follows:

For provision of additional services, the contract price shall be increased by an amount not to exceed **twelve thousand, eight hundred and seventy-five dollars (\$12,875)**. The total not to exceed amount of the Agreement shall be **fifty-seven thousand, four hundred and three dollars (\$57,403)**.

All other provisions of the Personal Services Agreement referenced above shall remain in full force and effect.

**GEOTECHNICAL RESOURCES, INC.**

By: 

Name: GEORGE FREITAS

Title: PRINCIPAL

Date: 5/30/17

**CITY OF OREGON CITY**

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

John M. Lewis, P.E.  
Public Works Director

DATED: \_\_\_\_\_, 2017

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

Anthony J. Konkol III  
City Manager

DATED: \_\_\_\_\_, 2017

APPROVED AS TO LEGAL SUFFICIENCY:

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

City Attorney

**Amendment 2 for Additional Inclinometer Installation  
Trillium Park Drive Area  
Prepared for City of Oregon City  
Oregon City, Oregon**

**May 26, 2017**

At your request, GRI has prepared this amendment scope and budget for installation and monitoring of one additional inclinometer for the landslide area near Trillium Park Drive in Oregon City. Our scope was developed after our meeting with City personnel on May 25, 2017. This amendment will include installation of one additional inclinometer within the City right-of-way to assist with long-term monitoring of the public infrastructure.

**SCOPE OF WORK**

- 1) One boring will be made to a depth of 100 ft in Swordfern Court at a final location yet to be established. The boring will be made with a truck-mounted drill rig using mud-rotary drilling techniques. Disturbed split-spoon samples will be obtained at periodic intervals during drilling. GRI will maintain a log of the various materials and conditions encountered in the boring and collect soil and rock samples.

Upon completion of drilling, an inclinometer casing and vibrating-wire piezometer will be grouted into the borehole to allow measurement of location and rate of future displacement and piezometric pressures in the soil and rock. The piezometer will be equipped with a data logger to permit readings to be obtained at hourly intervals. The inclinometer will be initialized soon after installation.

The boring will be drilled in Swordfern Court and we assume a formal traffic plan, lane closure, and/or flagging will not be required. We will use traffic cones and signage to identify the work area, and will not block private driveways. Drill cuttings will be transported off site to a permitted disposal facility. We assume the City will provide a hydrant or other water source to GRI at no charge. Final inclinometer location to be determined with City staff at a field meeting.

- 2) A summary memorandum will be prepared that provides the log of the boring and inclinometer installation, along with the three inclinometers planned as part of Amendment 1.
- 3) Beginning in winter 2017, GRI will monitor the inclinometer and download the piezometer data. We have budgeted for three rounds of monitoring that will extend into spring 2018. A brief memorandum presenting the inclinometer, piezometer, and rainfall data will be provided after each monitoring event. The memorandum will include discussion of findings from the three inclinometers planned as part of Amendment 1.

**SCHEDULE, TERMS, AND FEE**

We have scheduled the inclinometer installation work for June 12<sup>th</sup> through June 18<sup>th</sup>, and June 19<sup>th</sup> to be concurrent with other drilling work for the City.

We anticipate this work can be completed as an Amendment to our existing Personal Services Agreement, dated March 13, 2017.

As shown on the attached Breakdown of Costs, we recommend you budget \$12,875 for the above scope of work. Contact George Freitag or Mike Marshall with questions.

**EXHIBIT A**



		Staff Role/Title: Principal	Project Engr/Geol	CADD Drafter	Technical Editor	Contract Admin / Accountant				
Staff Name:										
2017 Rate Schedule:		\$ 215.00	\$ 140.00	\$ 100.00	\$ 120.00	\$ 125.00				
Task ID	Task Description	Hrs	Hrs	Hrs	Hrs	Hrs	Total Hours	Total Labor	Direct Expenses	TOTALS
	Amendment 2 Additional Inclinometer Installation and Monitoring	9	24	1	1	-	35	\$ 5,515.00	\$ 7,360.40	\$ 5,515.00
1	Inclinometer Installation		12				12	\$ 1,680.00		\$ 1,680.00
2	Inclinometer Initialization		2				2	\$ 280.00		\$ 280.00
3	Summary Memorandum (with Amd 1*)	1	2	1	1		5	\$ 715.00		\$ 715.00
4	Periodic Measurement and Memorandum (with Amd 1*)	4	8				12	\$ 1,980.00		\$ 1,980.00
5	Project Management	4					4	\$ 860.00		\$ 860.00
Note* - single Summary Memorandum and Perodic Memoranda for Amd 1 and 2										
								\$ -		\$ -
<b>Tasks Summary of Hours</b>		<b>9</b>	<b>24</b>	<b>1</b>	<b>1</b>	<b>-</b>	<b>35</b>	<b>\$ 5,515.00</b>	<b>\$ 7,360.40</b>	<b>\$ 12,875.40</b>
<b>Project Total:</b>										<b>\$ 12,875.40</b>
<b>Recommended Budget</b>										<b>\$ 12,875.00</b>





**CITY OF OREGON CITY**  
**Amendment No. 1 to Personal Services Agreement**

**Trillium Park Drive Slide Monitoring (PS 17-001)**

This is an Amendment to the Personal Services Agreement by and between the City of Oregon City (hereinafter City), and **Geotechnical Resources, Inc.**, hereinafter called "Consultant," which was previously entered into on **March 13, 2017** ("Contract") for **Trillium Park Drive Slide Monitoring**; and

Whereas, the parties wish to amend the Contract as set forth below:

WITNESSETH:

1. The **Scope of Work** is hereby amended as follows:

The Consultant shall perform additional work as outlined in attached Exhibit A.

2. The **Duration of Contract** is hereby amended as follows:

No changes.

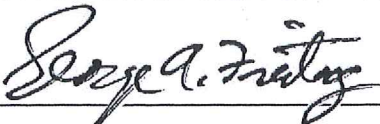
3. The **Payment Provisions** are hereby amended as follows:

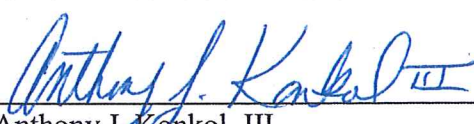
For provision of additional services, the contract price shall be increased by an amount not to exceed **thirty-two thousand, five hundred and twenty-eight dollars (\$32,528)**. The total not to exceed amount of the Agreement shall be **forty-four thousand, five hundred and twenty-eight dollars (\$44,528)**.

All other provisions of the Personal Services Agreement referenced above shall remain in full force and effect.

**GEOTECHNICAL RESOURCES, INC.**

**CITY OF OREGON CITY**


By: 

  
Anthony J. Konkol, III  
City Manager

Name: George A. Freitag

Date: 5-3-17

Title: Principal

  
Martin Montalvo  
Operations Manager/Acting Public Works Dir.

Date: 5-3-2017

Date: 5-3-17

**Amendment 1 for Inclinometer Installation  
Trillium Park Drive Area  
Prepared for City of Oregon City  
Oregon City, Oregon**

At your request, GRI has prepared this amendment scope and budget for additional inclinometer installation and monitoring related to the landslide that occurred along Trillium Park Drive in Oregon City. Our scope was developed after our meeting with City personnel on April 19, 2017. This amendment will include installation of inclinometers within the City rights-of-way to assist with long-term monitoring of the public infrastructure.

**SCOPE OF WORK**

- 1) One boring will be made to a depth of 100 ft in Trillium Park Drive to replace the inclinometer that sheared in February 2017. Two other borings will be advanced in Canyon Court and Wake Robin Court at locations yet to be established. The borings will be made with a truck-mounted drill rig using mud-rotary drilling techniques. Disturbed split-spoon samples will be obtained at periodic intervals during drilling. GRI will maintain a log of the various materials and conditions encountered in the boring and collect soil and rock samples.

Upon completion of drilling, an inclinometer casing and vibrating-wire piezometer will be grouted into the boreholes to allow measurement of location and rate of future displacement and piezometric pressures in the soil and rock. The piezometers will be equipped with a data logger to permit readings to be obtained at hourly intervals. The inclinometers will be initialized soon after installation.

We assume the borings will be drilled in existing roadways, and traffic plans, lane closures, and/or flagging will not be required. We have assumed drill cuttings can be transported to a City facility for reuse or recycling, and the City will provide a hydrant water source to GRI at no charge.

- 2) A summary memorandum will be prepared that provides the logs of the borings and inclinometer installation.
- 3) Beginning in winter 2017, GRI will monitor the inclinometer and download the piezometer data. We have budgeted for three rounds of monitoring that will extend into spring 2018. A brief memorandum presenting the inclinometer, piezometer, and rainfall data will be provided after each monitoring event.

**SCHEDULE, TERMS, AND FEE**

We have scheduled the inclinometer installation work for June 12<sup>th</sup> through June 16<sup>th</sup> to be concurrent with other drilling work for the City.

We anticipate this work can be completed as an Amendment to our existing Personal Services Agreement, dated March 13, 2017.

As shown on the attached Breakdown of Costs, we recommend you budget \$32,528 for the above scope of work.

**Exhibit A**





## GRI BREAKDOWN OF COSTS

Project Name: **Trillium Park Drive Landslide, Amendment 1 Inclinometer Installation and Monitoring**

### Project Breakdown of Costs (BOC)

4/27/2017

Staff Role/Title: Staff Name: 2017 Rate Schedule:		Principal	Project Engr/Geol	CADD Drafter	Technical Editor	Contract Admin / Accountant				
		\$ 215.00	\$ 140.00	\$ 100.00	\$ 120.00	\$ 125.00				
Task ID	Task Description									
		Hrs	Hrs	Hrs	Hrs	Hrs	Total Hours	Total Labor	Direct Expenses	TOTALS
Amendment 1 Inclinometer Installation and Monitoring		18	80	4	4	2	108	\$ 16,200.00	\$ 20,032.00	\$ 16,264.20
1	Inclinometer Installation		40				40	\$ 5,600.00		\$ 5,600.00
2	Inclinometer Initialization		8				8	\$ 1,120.00	\$ 64.20	\$ 1,184.20
3	Summary Memorandum	4	8	4	4		20	\$ 2,860.00		\$ 2,860.00
4	Periodic Measurement and Memorandum (3)	4	24				28	\$ 4,220.00		\$ 4,220.00
5	Project Management	10				2	12	\$ 2,400.00		\$ 2,400.00
							\$ -		\$ -	
Tasks Summary of Hours		18	80	4	4	2	108	\$ 16,200.00	\$ 20,096.20	\$ 32,528.40
Project Total: \$ 32,528.40										
Recommended Budget \$ 32,528.00										



Project Name: **Trillium Park Drive Landslide, Amendment 1 Inclinator Installation and Monitoring**

Project Breakdown of Costs (BOC)

Updated: 4/27/17

Task ID	Task Description	Basis of Estimate	Amount
			\$ 20,032.60
1	Drilling	3, 100 ft deep inclinometers (est from WSCC, dated 4/14/17)	\$ 15,880.00
1	Piezometers and cable (3)	3 @ \$500	\$ 1,500.00
1	Data Loggers (3)	3 @ \$820	\$ 2,460.00
1	Mileage (40 mi roundtrip, 6 trips)	240 miles from Beaverton to Oregon City @ 53.5 cents per mile	\$ 128.40
			\$ 64.20
2	Mileage (40 mi roundtrip, 3 trips)	120 miles from Beaverton to Oregon City @ 53.5 cents per mile	\$ 64.20
			\$ -
Total Direct Expenses			\$ 20,096.80

**CITY OF OREGON CITY  
PERSONAL SERVICES AGREEMENT**

**Trillium Park Drive Slide Monitoring**

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between the CITY OF OREGON CITY ("City") and **Geotechnical Resources, Inc.** ("Consultant").

**RECITALS**

A. City requires services that Consultant is capable of providing under the terms and conditions hereinafter described.

B. Consultant is able and prepared to provide such services as City requires under the terms and conditions hereinafter described.

The parties agree as follows:

**AGREEMENT**

1. **Term.** The term of this Agreement shall be from the date the contract is fully executed until **June 30, 2017**, unless sooner terminated pursuant to provisions set forth below. However, such expiration shall not extinguish or prejudice City's right to enforce this Agreement with respect to (i) breach of any warranty; or (ii) any default or defect in Consultant's performance that has not been cured.

2. **Compensation.** City agrees to pay Consultant on a time-and-materials basis for the services required. Total compensation, including reimbursement for expenses incurred, shall not exceed **twelve thousand and 00/100 dollars (\$12,000.00)**.

3. **Scope of Services.** Consultant's services under this Agreement shall consist of services as detailed in **Exhibit A**, attached hereto and by this reference incorporated herein.

4. **Standard Conditions.** This Agreement shall include all of the standard conditions as detailed in **Exhibit B**, attached hereto and by this reference incorporated herein.

5. **Schedule.** The components of the project described in the Scope of Services shall be completed according to Term, above.

6. **Integration.** This Agreement, along with the description of services to be performed attached as Exhibit A and the Standard Conditions to Oregon City Personal Services Agreement attached as Exhibit B, contain the entire agreement between and among the parties, integrate all the terms and conditions mentioned herein or incidental hereto, and supersede all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

7. **Notices.** Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, by hand delivery or by electronic means. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

To the City:

City of Oregon City  
PO Box 3040  
625 Center Street  
Oregon City, OR 97045  
Attention: Aleta Froman-Goodrich, PE

To Consultant:

George Freitag, CEG  
Geotechnical Resources, Inc.  
9750 SW Nimbus Avenue  
Beaverton, Oregon 97008

Consultant shall be responsible for providing the City with a current address. Either party may change the address set forth in this Agreement by providing notice to the other party in the manner set forth above.

8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this 13th day of March, 2017.

CITY OF OREGON CITY

GEOTECHNICAL RESOURCES, INC.

By: 

John M. Lewis, P.E.

Title: Public Works Director

By: 

Title: PRINCIPAL

DATED: 3-13, 2017.

DATED: 3/8, 2017.

**Exhibit A**  
**Scope of Work and Fee Estimate for Continuing Geotechnical Services**  
**Trillium Park Drive Landslide**  
**Oregon City, Oregon**  
**Prepared by GRI for the City of Oregon City**

(February 28, 2017; Revised March 3, 2017)

**BACKGROUND**

Following a period of prolonged, intense precipitation in February 2017, the City of Oregon City (City) was notified of a water line damage in the roadway of Trillium Park Drive on the afternoon of February 16, 2017. The water line break caused damage to the asphalt pavement and some tension cracks were visible in the pavement north of the break. The break also caused the pavement to 'inflate' upward due to pressure. An unknown amount of water migrated between the pavement and the subgrade causing damage. Water reportedly exited the surface monument area for the existing inclinometer. The water line was shut off by means of valves located north and south of the break area and the road was closed.

On the morning of February 21, 2017, City crews noticed additional pavement cracking and a downed tree in the landslide area and contacted GRI. GRI observed several sets of pavement and ground cracks along Trillium Park Drive, and foundation cracks were visible in the residence at 13776 Canyon Court.

**APPROACH AND SCOPE OF WORK**

The primary purpose of our work will be to evaluate surface conditions at the site and develop recommendations to assist the City with short- and long-term mitigation options of the landslide with respect to public improvements. Our consultation services will consist of a review of the available data for the site area, a geologic reconnaissance, review operation of field instrumentation, and preparation of a memorandum. The memorandum will summarize our findings and provide our preliminary conclusions and recommendations for various monitoring and mitigation options for the roadway and public utilities in the right-of-way. Due to the rapidly developing nature of the site conditions, some of this work is already in progress.

- 1) Existing maps and technical reports published by the US Geological Survey (USGS) and the Oregon Department of Geology and Mineral Industries (DOGAMI) will be reviewed for pertinent geologic, hydrogeologic, and soils information.
- 2) Airborne laser elevation data collected by lidar instrumentation will be obtained and processed to produce lidar-derived imagery used in the evaluation of topographic features and slope hazards at the site.
- 3) A site reconnaissance will be completed by an experienced geotechnical engineer and engineering geologist from GRI to collect site data and conduct limited surface mapping. The surface mapping will include evaluation of lidar data, geologic mapping, and mapping of other relevant surface data. Particular attention will be directed toward identifying characteristic landslide surface features, such as ground

cracks, hummocks, trees in distressed orientations, springs or seeps, rock mass characteristics (if exposed), and obvious visible signs of potential slope instability.

- 4) GRI will assist the City's Professional Land Surveyor with the placement of survey hubs and crack monitors that will be used to evaluate the changes to the horizontal and vertical position of survey points.
- 5) If possible, data will be collected from the existing inclinometer and vibrating wire piezometer installed in 2006. The data will be evaluated for indications of movement and depth to groundwater.
- 6) GRI will attend and participate in up to two public meetings, if necessary, including assistance with preparation of public presentation materials and working with the project team on content.
- 7) Based on this work, engineering studies and analyses will be accomplished that will lead to preliminary findings concerning slope stability hazards and the feasibility of reducing the risk associated with these hazards. GRI will meet with the City to discuss our preliminary findings. We will provide a summary of potential monitoring and mitigation alternatives, if appropriate, that outlines relative costs, design life, construction feasibility, maintenance, and short- and long-term effectiveness for the various mitigation options, as appropriate. This work will be summarized in a Geotechnical Memorandum.

#### **DELIVERABLES**

- 1) Site Visit Reports (SVRs) will be prepared at the direction of the City to document daily observations. Two SVRs have been prepared and submitted as of the date of this scope and fee estimate.
- 2) Geotechnical Memorandum (draft and final).

#### **SCHEDULE AND FEE**

As noted above, portions of this work are in progress, and we are in a position to begin immediately on all portions of the proposed work upon receipt of your authorization to proceed. We anticipate with the rapidly changing site conditions, information developed during the course of our work can be submitted to you informally as soon as it becomes available. The fee for the above-described work will be computed on a time-and-expenses basis in accordance with the attached Fee Schedule. We recommend you budget \$12,000 for the work. This amount will not be exceeded without your prior written approval. Our estimated costs for the work are summarized on the attached Breakdown of Costs.

Enclosed: Fee Schedule  
Breakdown of Costs





**GRI**  
Beaverton, Oregon

**2017 FEE SCHEDULE**

<b>Personnel</b>	<b>Rate/Hour</b>
Principal	\$ 215
Associate	\$ 190
Senior Engineer/Geologist	\$ 160
Project Engineer/Geologist	\$ 140
Staff Engineer/Scientist	\$ 115
Engineering Assistant	\$ 90
Contract Administrator	\$ 125
Technical Editor	\$ 120
Drafter	\$ 100
Secretarial Services	\$ 65

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**Other Charges**

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<b>Vehicle:</b>	Vehicles will be billed at the current IRS business mileage reimbursement rate.
<b>Fill Control Equipment:</b>	Nuclear Density Gage rental will be billed at \$5 per hour, with maximum charge of \$25 per day or \$125 per week.
<b>Reproduction:</b>	In-house reproduction, \$0.10 per sheet.
<b>Field Instrumentation and Monitoring Equipment:</b>	Due to varied conditions, equipment requirements, location and use, rates for field instrumentation, monitoring, and other specialized equipment will be provided as required.
<b>Subcontractor Services:</b>	Charges for subcontractor services will be computed at cost plus 10%.
<b>Travel and Subsistence:</b>	All charges related to travel and subsistence will be computed at cost.

(LAST REVISED 5/1/2016)

<b>GRI BREAKDOWN OF COSTS</b>									
Project Name: <b>Trillium Park Drive Landslide</b>									
Project Breakdown of Costs (BOC)									
3/2/2017									
Staff Role/Title:		Principal	Project Engr/Geol	CADD Drafter	Technical Editor	Contract Admin / Accountant			
Staff Name:									
2017 Rate Schedule:		\$ 215.00	\$ 140.00	\$ 100.00	\$ 120.00	\$ 125.00			
Task ID	Task Description								
		Hrs	Hrs	Hrs	Hrs	Hrs	Total Hours	Total Labor	Direct Expenses
<b>Continuing Geotechnical Services</b>		24	44	2	1	2	73	\$11,890.00	\$ 107.00
1	Existing Data Review		8				8	\$ 1,120.00	\$ 1,120.00
2	Site Reconnaissance and Field Mapping	8	8				16	\$ 2,840.00	\$ 107.00
3	Instrumentation Evaluation		4				4	\$ 560.00	\$ 560.00
4	Survey Hub Evaluation		8				8	\$ 1,120.00	\$ 1,120.00
5	Meetings and Consultation	10	8				18	\$ 3,270.00	\$ 3,270.00
6	Geotechnical Memorandum	4	8	2	1		15	\$ 2,300.00	\$ 2,300.00
7	Project Management	2				2	4	\$ 680.00	\$ 680.00
	(Task 2 - Mileage 200 mi @ \$0.535/mi)								
								\$ -	\$ -
<b>Tasks Summary of Hours</b>		24	44	2	1	2	73	\$ 11,890.00	\$ 107.00
								<b>Project Total: \$ 11,997.00</b>	
								<b>Recommended Budget \$ 12,000.00</b>	

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

1. Consultant Identification. Consultant shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Consultant's social security number, as City deems applicable.

2. Payment.

(a) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers.

(b) City agrees to pay Consultant within thirty (30) days after receipt of Consultant's itemized statement. Amounts disputed by City may be withheld pending settlement.

(c) City certifies that sufficient funds are available and authorized for expenditure to finance the cost of the services to be provided pursuant to this Agreement.

(d) City shall not pay any amount in excess of the compensation amounts set forth above, nor shall City pay Consultant any fees or costs that City reasonably disputes.

3. Independent Contractor Status.

(a) Consultant is an independent contractor and is free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results.

(b) Consultant represents that it is customarily engaged in an independently established business and is licensed under ORS chapter 671 or 701, if the services provided require such a license. Consultant maintains a business location that is separate from the offices of the City and bears the risk of loss related to the business as demonstrated by the fixed price nature of the contract, requirement to fix defective work, warranties provided and indemnification and insurance provisions of this Agreement. Consultant provides services for two or more persons within a 12 month period or routinely engages in advertising, solicitation or other marketing efforts. Consultant makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and

Consultant has the authority to hire or fire persons to provide or assist in providing the services required under this Agreement.

(c) Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law (including applicable City or Metro business licenses as per Oregon City Municipal Code Chapter 5.04). Consultant shall furnish the tools or equipment necessary for the contracted labor or services.

(d) Consultant is not eligible for any federal social security or unemployment insurance payments. Consultant is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Consultant under this Agreement.

(e) Consultant agrees and certifies that it is licensed to do business in the state of Oregon and that, if Consultant is a corporation, it is in good standing within the state of Oregon.

4. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term by mutual written consent of the parties or by the City upon ten (10) days written notice to the Consultant, delivered by certified mail or in person.

(b) Upon receipt of notice of early termination, Consultant shall immediately cease work and submit a final statement of services for all services performed and expenses incurred since the date of the last statement of services.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of City provided in this Agreement and relating to defaults by Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

5. No Third-Party Beneficiaries. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

6. Payment of Laborers; Payment of Taxes.

(a) Consultant shall:

(i) Make payment promptly, as due, to all persons supplying to Consultant labor and materials for the prosecution of the services to be provided pursuant to this Agreement.

(ii) Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.

(iii) Not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished.

(iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Consultant under this Agreement and, unless Consultant is subject to back-up withholding, City will not withhold from such compensation or payments any amount(s) to cover Consultant's federal or state tax obligation.

(v) Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 653.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime.

(b) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Agreement as such claim becomes due, City may pay such claim to the person furnishing the labor or services and shall charge the amount of the payment against funds due or to become due Consultant by reason of this Agreement.

(c) The payment of a claim in this manner

shall not relieve Consultant or Consultant's surety from obligation with respect to any unpaid claims.

(d) Consultant and subconsultants, if any, are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

7. Subconsultants and Assignment.

Consultant shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Consultant.

8. Access to Records. City shall have access to all books, documents, papers and records of Consultant that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

9. Ownership of Work Product; License. All work products of Consultant that result from this Agreement (the "Work Products") are the exclusive property of City. In addition, if any of the Work Products contain intellectual property of Consultant that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Consultant hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Consultant under this Agreement. The parties expressly agree that all works produced (including, but not limited to, any taped or recorded items) pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Consultant shall not publish, republish, display or otherwise use any work or Work Products resulting from this Agreement without the prior written agreement of City.

10. Compliance With Applicable Law.

Consultant shall comply with all federal, state, and

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

local laws and ordinances applicable to the services to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230 and 279B.270. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

11. Professional Standards. Consultant shall be responsible, to the level of competency presently maintained by others practicing in the same type of services in City's community, for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this authorization.

12. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

13. Indemnity and Insurance.

(a) Indemnity. Consultant acknowledges responsibility for liability arising out of Consultant's negligent performance of this Agreement and shall hold City, its officers, agents, ~~Consultants~~, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim caused ~~or alleged to be caused~~ by the negligent acts, omissions, activities or services by Consultant, or the agents, Consultants or employees of Consultant provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Consultant certifies that Consultant has qualified for workers' compensation as required by the state of Oregon. Consultant shall provide the Owner, within ten (10) days after execution of this Agreement, a certificate of insurance evidencing coverage of all subject workers under Oregon's

workers' compensation statutes. The insurance certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. All agents or Consultants of Consultant shall maintain such insurance.

(c) Comprehensive General and Automobile Insurance. Consultant shall maintain comprehensive general and automobile liability insurance for protection of Consultant and City and for their directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, including loss of use, and occurring as a result of, or in any way related to, Consultant's operation, each in an amount not less than \$1,000,000 combined, single-limit, per-occurrence/annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Consultant.

(d) Errors and Omissions Insurance. Consultant shall provide City with evidence of professional errors and omissions liability insurance for the protection of Consultant and its employees, insuring against bodily injury and property damage arising out of Consultant's negligent acts, omissions, activities or services in an amount not less than \$500,000 combined, single limit. Consultant shall maintain in force such coverage for not less than three (3) years following completion of the project. Such insurance shall include contractual liability.

Within ten (10) days after the execution of this Agreement, Consultant shall furnish City a certificate evidencing the dates, amounts, and types of insurance that have been procured pursuant to this Agreement. Consultant will provide for not less than thirty (30) days' written notice to City before the policies may be revised, canceled, or allowed to expire. Consultant shall not alter the terms of any policy without prior written authorization from City. The provisions of this subsection apply fully to Consultant and its Consultants and agents.

14. Legal Expenses. In the event legal action is brought by City or Consultant against the other to

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

15. Severability. The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

16. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

17. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

18. Hierarchy. The conditions contained in this document are applicable to every Personal Services Agreement entered into by the City of Oregon City in the absence of contrary provisions. Should contrary provisions be included in a Personal Services Agreement, those contrary provisions shall control over these conditions.

19. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the state of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

20. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. Nonwaiver. The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

22. Information and Reports. Consultant shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Consultant shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but shall remain with Consultant. Copies as requested shall be provided free of cost to City.

23. City's Responsibilities. City shall furnish Consultant with all available necessary information, data, and materials pertinent to the execution of this Agreement. City shall cooperate with Consultant in carrying out the work herein and shall provide adequate staff for liaison with Consultant.

24. Arbitration. All disputes arising out of or under this Agreement shall be timely submitted to nonbinding mediation prior to commencement of any other legal proceedings. The subsequent measures apply if disputes cannot be settled in this manner.

(a) Any dispute arising out of or under this Agreement shall be determined by binding arbitration.

(b) The party desiring such arbitration shall give written notice to that effect to the other party and shall in such notice appoint a disinterested person of recognized competence in the field as arbitrator on its behalf. Within fifteen (15) days thereafter, the other party may, by written notice to the original party, appoint a second disinterested person of recognized competence as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third disinterested

## STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

person of recognized competence, and the three arbitrators shall, as promptly as possible, determine such matter, provided, however, that:

(i) If the second arbitrator is not appointed as described above, then the first arbitrator shall proceed to determine such matter; and

(ii) If the two arbitrators appointed by the parties are unable to agree, within fifteen (15) days after the second arbitrator is appointed, on the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties and, if the parties fail to agree on the selection of the third arbitrator within fifteen (15) days after the arbitrators appointed by the parties give notice, then, within ten (10) days thereafter, either of the parties, on written notice to the other party, may request such appointment by the presiding judge of the Clackamas County Circuit Court.

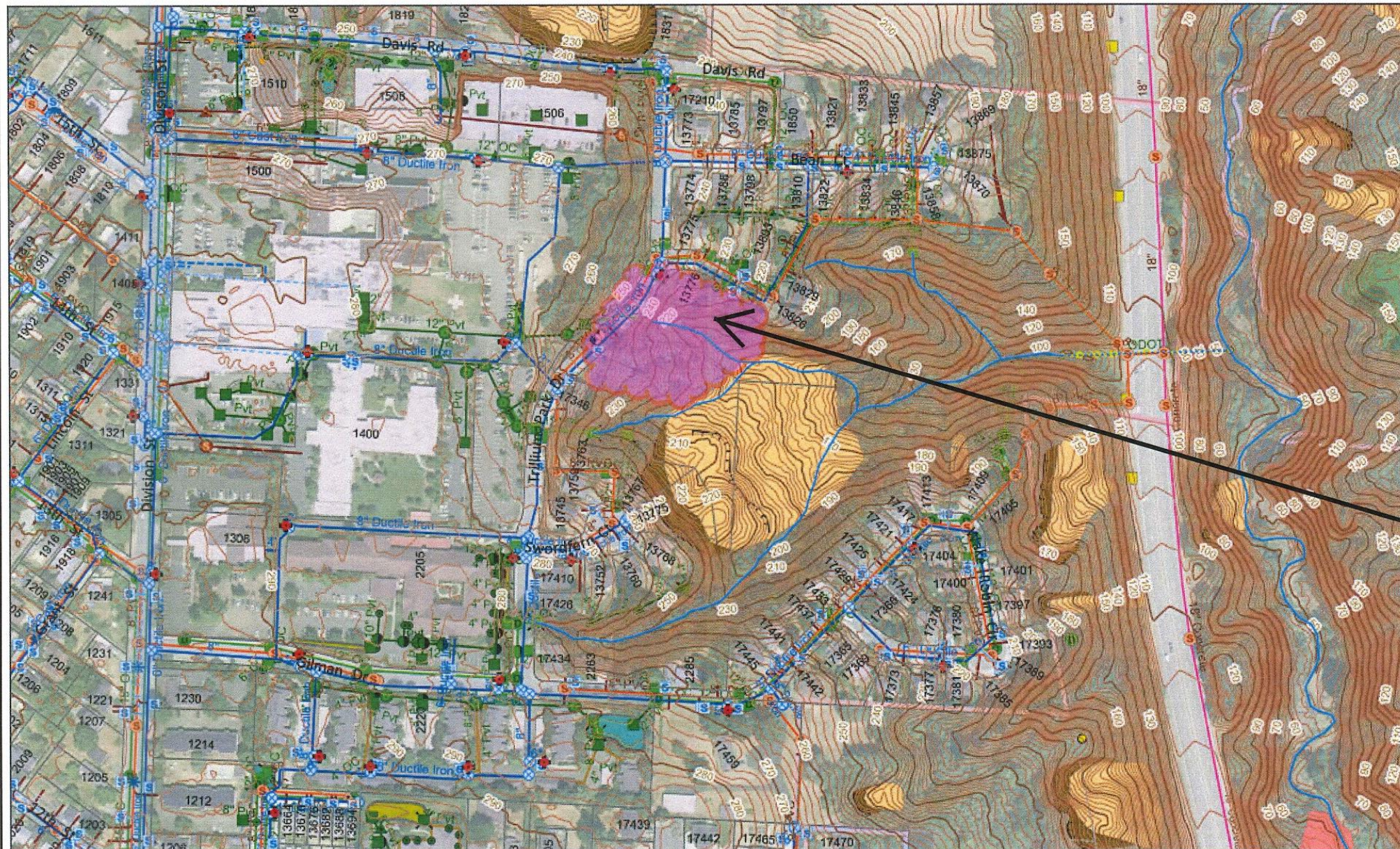
(c) Each party shall each be entitled to present evidence and argument to the arbitrators. The determination of the majority of the arbitrators or the sole arbitrator, as the case may be, shall be conclusive on the parties, and judgment on the same may be entered in any court having jurisdiction over the parties. The arbitrators or the sole arbitrator, as the case may be, shall give written notice to the parties, stating the arbitration determination, and shall furnish to each party a signed copy of such determination. Arbitration proceedings shall be conducted pursuant to ORS 33.210 et seq. and the rules of the American Arbitration Association, except as provided otherwise.

(d) Each party shall pay the fees and expenses of the arbitrator appointed by such party and one-half of the fees and expenses of the third arbitrator, if any.

25. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.



# Oregon City GIS Map

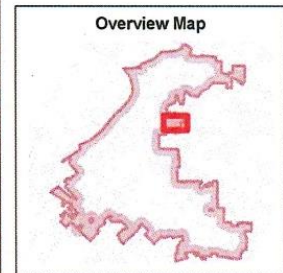


### Legend

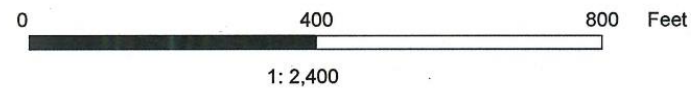
- Streams**
  - Above Ground
  - Below Ground
- Contours (2ft) - 1:3,600 and closer**
  - 10 foot
  - 2 foot
- Taxlots**
  - Taxlots (Outside UGB)
  - Unimproved ROW
- Water Hydrants**
  - (Other owner)
  - OC
  - CRWD
  - Private
- Water Service Meters**
  - (Other owner or Type not defined)
  - OC
  - CRWD
- Water Master Meters**
  - (Other owner)
  - OC
- Water Irrigation Meters**
  - (Other owner)

### Notes

Trillium Park Drive Landslide Zone (pink colored area)



The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, surveying or navigation purposes. Notification of any errors is appreciated.

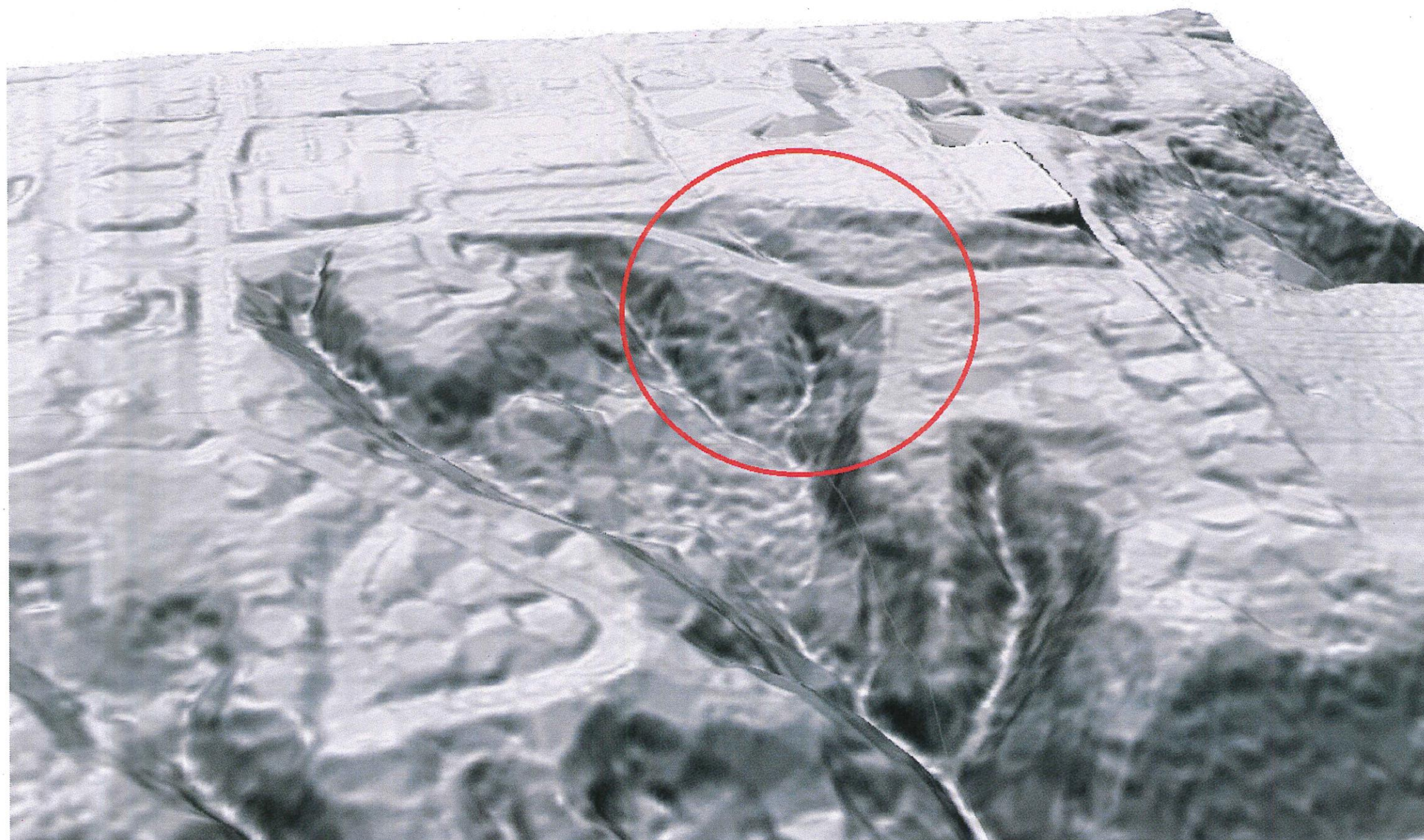


Map created 2/24/2017

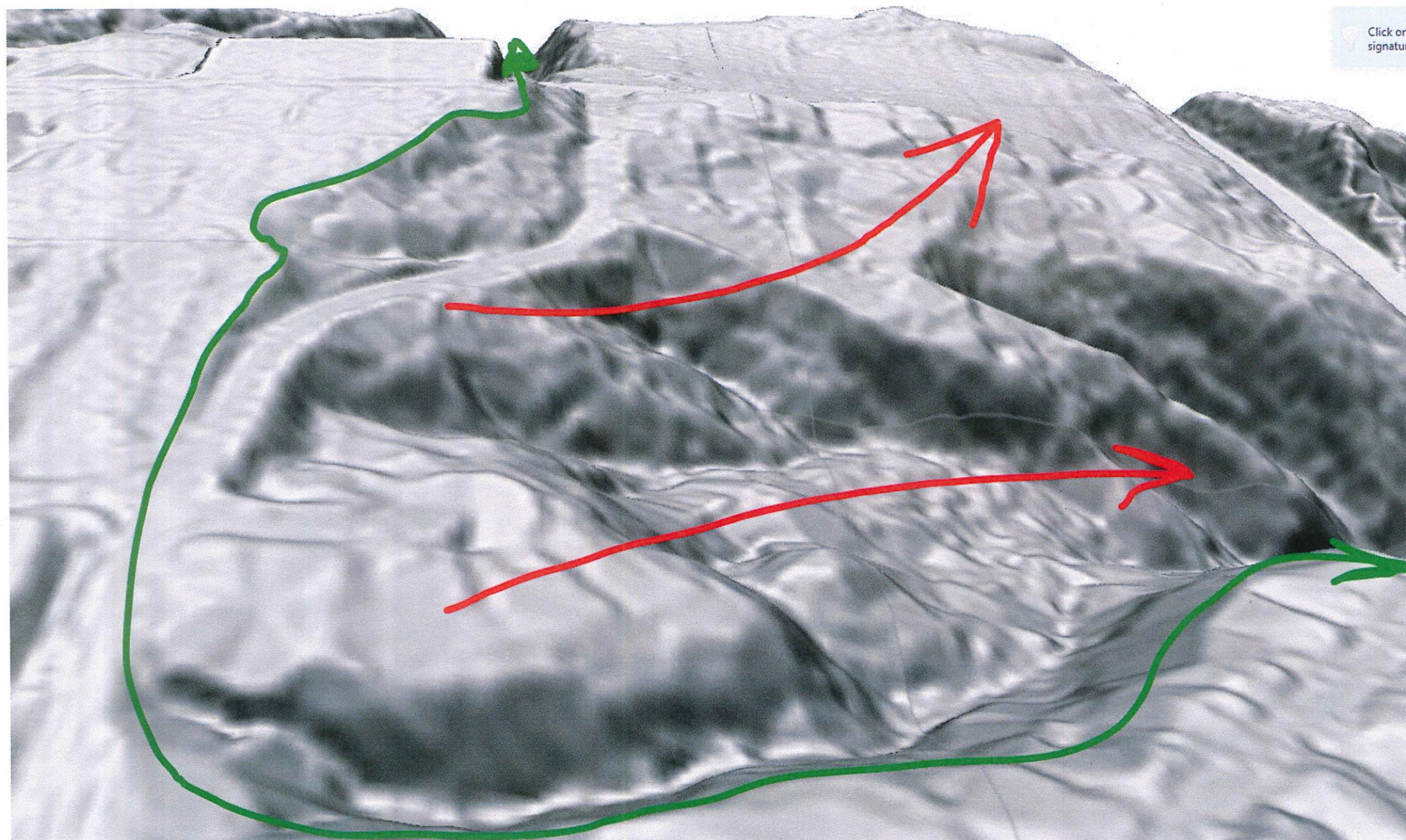
City of Oregon City  
PO Box 3040  
625 Center St  
Oregon City  
OR 97045  
(503) 657-0891  
www.oregoncity.org





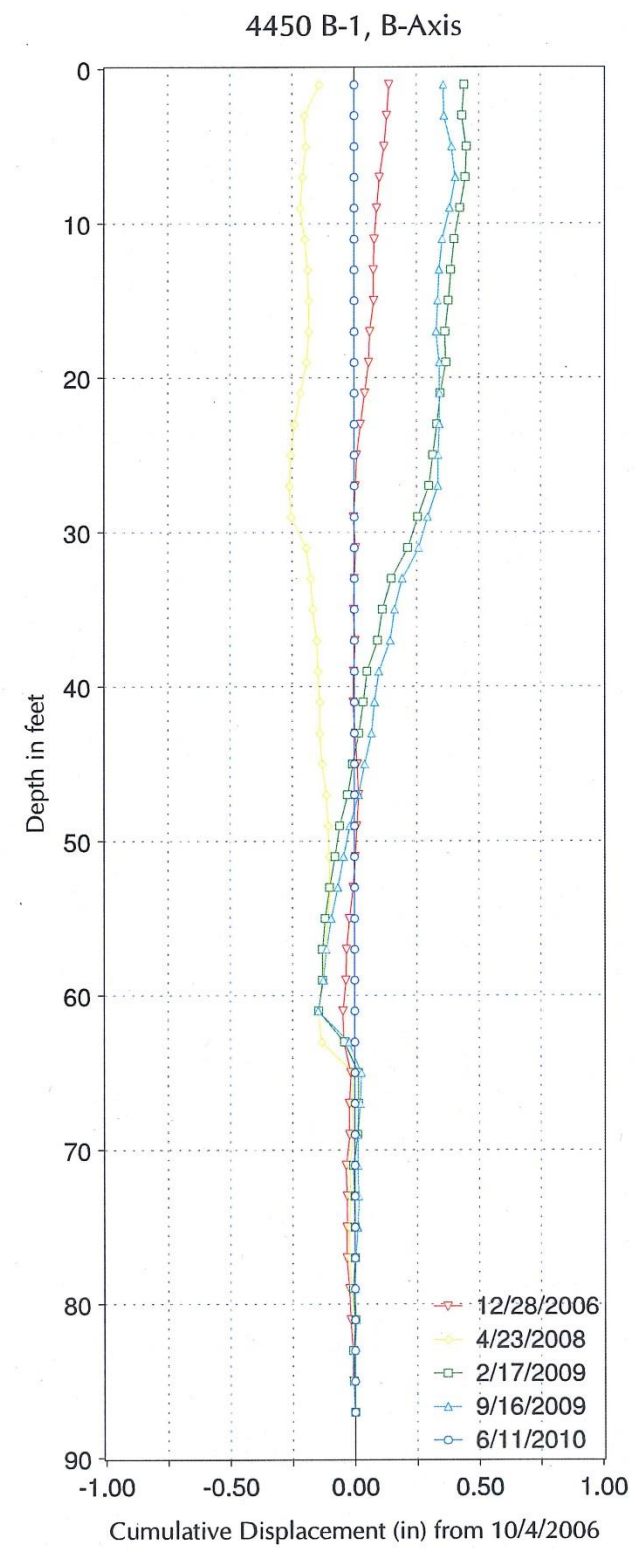
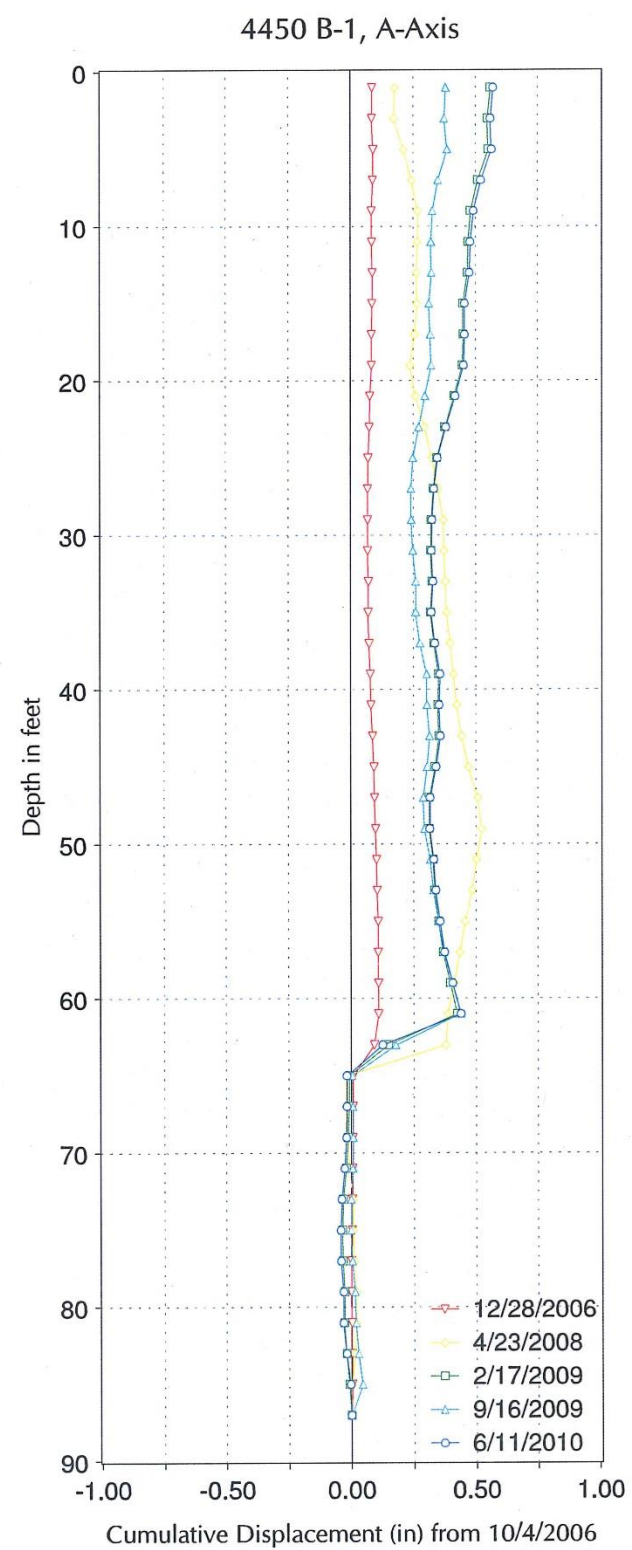






Click on  
signature



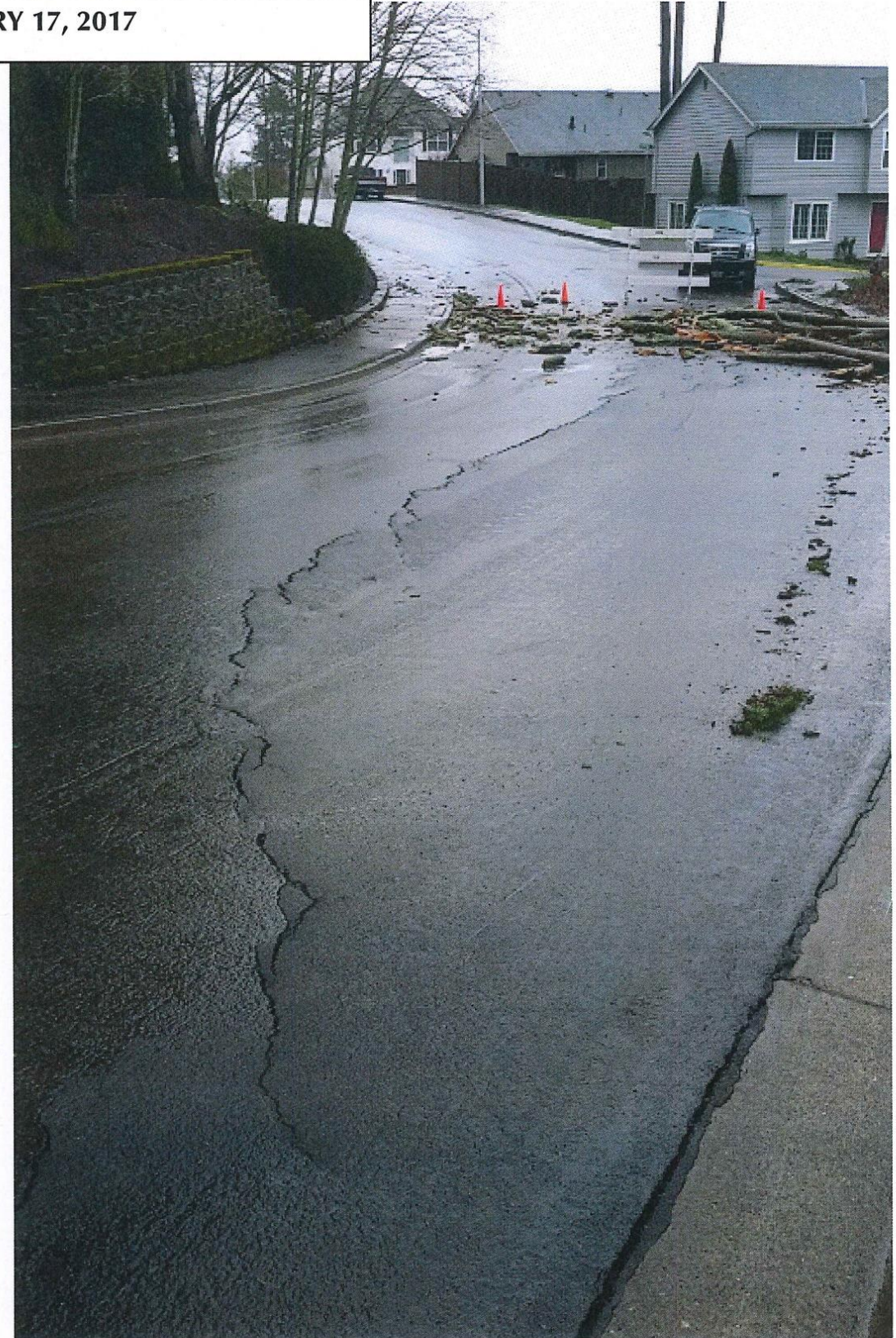


Trillium Park Avenue Landslide, GRI Job #4450  
June 11, 2010  
A-Axis bias shift correction applied to 4/23/08,  
2/17/09, 9/16/09 and 6/11/10

Ground surface elevation +250 ft  
Piezometer elevation +225 ft  
B-axis plot for 6/11/10 un-validated and therefore not shown



FEBRUARY 17, 2017





# Accessory Buildings / Structures

Ordinance 17-0001

City Commission June 7, 2017



# Summary of Ordinance

1. Allow metal sided accessory buildings in residential zones
2. The proposed code language would:
  - a. Increase the height to 17 feet
  - b. Remove any building separation
  - c. Apply the reduced setback to the corner setback
3. Allow structures constructed prior to January 1, 2017 to remain
4. Relocate code language for hooved animals
5. Allow temporary structures within the right-of-way
6. Allow temporary structures for commercial, industrial, mixed use, multi-family, and institutional properties
7. Prohibit tarps and allow membrane or fabric covered storage areas as temporary structures.
8. Remove code language for firework and Christmas tree sales, and instead regulate temporary.

Thank you





# HIGHWAY 99E BLUFF WATERLINE REPLACEMENT PROJECT UPDATE

CITY COMMISSION  
JUNE 7, 2017



# CONTRACTOR WORK PLAN

- Installation of traffic control & rock fall protection fencing
- Shut down & removal of the existing 10" waterline
- Video inspection of the remaining 10" waterline under Hwy 99E to identify condition of pipe
- Removal of the slope mesh, scaling of the rock bluff adjacent to the waterline, rock bolting of large loose boulders & curing of the grout, and reinstallation of the slope mesh
- Installation of new pipe support anchor bolts into rock bluff, curing of the grout & testing of anchor bolts
- Installation of the new 10" waterline and attachment to new anchor bolts, including testing & restoring flow to waterline
- Removal of traffic control & rock fall protection fencing



# TRAFFIC IMPACTS

- Lane Closures beginning June 12<sup>th</sup>
  - Closure of 2 lanes, 24 hours a day
  - Begin closure on a Monday before AM traffic
- Minor Promenade Impacts
  - PW Operations waterline work at top
- ODOT Highway Freight Restriction Notice Issued
- Messaging on ODOT Permanent Signs
  - I-205 SB @ Gladstone
  - 99E SB @ Dunes
- Portable Changeable Message Signs (PCMS) placed this week to notify of upcoming roadwork





# TRAFFIC IMPACTS





# PUBLIC OUTREACH

- Stakeholder & Interested Parties List
- Project Webpage
- Social Media Posts
- Project Post Card Mailed
- Trail News Article in Summer
- Coordination with ODOT
- Press Release

The screenshot displays the City of Oregon City's public outreach efforts. At the top is the city's logo and a navigation menu with links to Community, Business & Development, Government, Activities & Recreation, and How Do I. A search bar is located on the right. The main content area features the '99E Bluff Waterline Replacement Project' details, including Project ID (CI 16-004), Project Type (Capital Improvement), Project Status (Active), Project Dates (Summer 2016 to Summer 2017), Project Budget (\$400,000), and Location (McLoughlin Promenade, Bluff Street and 3rd Street, 97045 Oregon City, OR). A paragraph describes the project's background, mentioning leaks in December 2013 and coordination with ODOT. Below this is a 'PROJECT CONTACTS' section listing Dayna Webb. The bottom of the screenshot shows social media posts from the City of Oregon City on Facebook and Twitter, both featuring a photo of a seagull on a stone wall overlooking a river.

**99E Bluff Waterline Replacement Project**

<b>Project ID:</b> CI 16-004	<b>Project Status:</b> Active	<b>Location:</b>
<b>Project Type:</b> Capital Improvement	<b>Project Dates:</b> Summer 2016 to Summer 2017	McLoughlin Promenade
<b>Project Contact Information:</b> See Project Contacts	<b>Project Budget:</b> \$400,000	Bluff Street and 3rd Street 97045 Oregon City, OR
		See map: <a href="#">Google Maps</a>
		<b>Neighborhood:</b> McLoughlin

In December 2013, the vertical exposed waterline along the Hwy 99E bluff experienced small leaks; those leaks were repaired but the overall condition of the waterline has deteriorated and the pipe has reached the end of its useful service life. Staff is coordinating closely with the Oregon Department of Transportation (ODOT) on the timing of this project, as ODOT will also be working in this area on a project to scale the rock bluff and repair the slope mesh and a project to update the illumination system in the 99E vehicle and pedestrian tunnel.

**PROJECT CONTACTS**

Dayna Webb

**facebook**

Email or Phone  Password  [Log In](#)

[Forgot account?](#)

**twitter**

**City of Oregon City** (@orcity) [Follow](#)

Located 13 miles south of Portland, OR, where the Willamette and Clackamas Rivers meet. A follow is not an endorsement.

**City of Oregon City** (@orcity) · Mar 6 · Have a project that would enhance #OregonCity? We have a grant that could help. Click the link to learn more & apply bit.ly/EGP17-18

**New to Twitter?**  
Sign up now to get your own personalized timeline!  
[Sign up](#)

**Posts**

**Oregon City - City Hall** shared Clackamas County, Oregon's video.  
March 6 at 1:10pm

Do you live, work or play on or near the Clackamas River? Join us at City Hall on March 9 from 7 to 9 PM as we participate in an Open House: Disaster Preparedness on the Clackamas River. Learn more below.

Government Organization in Oregon City, Oregon  
4.7 ★★★★★ · [Open Now](#)

Oregon City is home to shopping areas, recreational opportunities, businesses, a wide variety of historical and cultural attractions, and living history museums dedicated to celebrating the Pioneer spirit.



# QUESTIONS?









# COMMENT FORM



\*\*\*PLEASE PRINT CLEARLY\*\*\*

- SPEAK INTO THE MICROPHONE AND STATE YOUR NAME AND RESIDING CITY
- Limit Comments to **3 MINUTES**.
- Give to the Clerk in Chambers **prior** to the meeting.

Date of Meeting

June 7, 2019

Item Number From Agenda

4

NAME:

Esther Hunt

ADDRESS:

Street: 17004 S Robertson Ln

City, State, Zip: Oregon City OR 97045

PHONE NUMBER:

503 351-0073

E-MAIL ADDRESS:

gawmatoo@aol.com

SIGNATURE:

Esther M. Hunt