

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") is made and entered into effective as of _____, 2019 (the "Effective Date"), between City of John day ("City"), an Oregon municipal corporation, whose address is 450 East Main Street, John Day, Oregon 97845, and _____ ("Contractor"), whose address is _____.

RECITALS:

A. City desires to contract with Contractor to perform certain engineering and design services for wastewater system improvements.

B. Subject to the terms and conditions contained in this Agreement, Contractor will perform the Services (as defined below) for and on behalf of City. Work to be performed under this Agreement will be funded in part with federal grant funds from the Oregon Community Development Block Grant ("CDBG") program administered by the Oregon Infrastructure Finance Authority ("OIFA"). City's receipt of the CDBG grant funds is subject to the terms and conditions of that State of Oregon Community Development Block Grant Program Grant Contract dated on or about _____, 2019 between City and the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority (the "Grant Agreement").

AGREEMENT:

NOW, THEREFORE, in consideration of the parties' mutual obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Engineer Services.

1.1 Services; Standards. Subject to the terms and conditions contained in this Agreement, Contractor will perform the following engineering services for and on behalf of City (collectively, the "Services"): (a) those engineering services described in the attached Schedule 1.1; (b) any other necessary or appropriate services customarily provided by Contractor in connection with its performance of those services described in the attached Schedule 1.1 and/or otherwise required under the Grant Agreement (or any related documents); and (c) such other engineering and related services requested by City from time to time. Contractor will (w) consult with and advice City on all matters concerning the Services reasonably requested by City, (x) communicate all matters and information concerning the Services to the city public works director (or his or her designee) and perform the Services under the general direction of the city public works director (or his or her designee) and/or city administrator, (y) devote such time and attention to the performance of the Services as City deems necessary or appropriate, and (z) perform the Services to the best of Contractor's ability. Contractor acknowledges and agrees that City may cause or direct other persons or contractors to provide services for and on behalf of City that are the same or similar to the Services provided by Contractor under this Agreement.

1.2 Schedule of Services. The Services will be completed expeditiously and in a timely manner. Notwithstanding anything contained in this Agreement to the contrary, all Services will be completed in accordance with the schedule of services provided on the attached Schedule 1.2.

Contractor and City will routinely consult with each other to ensure effective and efficient provision of the Services and minimize expense.

1.3 Condition Precedent. Notwithstanding anything contained in this Agreement to the contrary, (a) City's performance of its obligations under this Agreement is conditioned on Contractor's performance of its obligations under this Agreement, including, without limitation, those Contractor obligations described under Section 4.4, and (b) this Agreement is made subject to the terms and conditions contained in the Grant Agreement.

2. Compensation.

2.1 Compensation. Subject to the terms and conditions contained in this Agreement, in consideration of Contractor's timely performance of the Services in accordance with this Agreement, City will pay Contractor at the hourly rates identified in the fee schedule attached hereto as Schedule 2.1. Contractor will submit monthly invoices to City concerning the Services performed by Contractor during the immediately preceding month (each an "Invoice"). Each Invoice will contain the following information: (a) a summary of the Services performed by Contractor (and by whom); (b) the number of hours (or fraction thereof) each person spent to perform the Services; (c) the percentage of the total design engineering portion of the Services actually completed during the applicable billing period as mutually and reasonably determined by City (and as demonstrated by task and corresponding summary of charges for each task applicable to the design engineering portion of the Services); (d) the applicable hourly rate(s) for performing the Services; and (e) all other information reasonably requested by City. City will pay the amount due under each Invoice within thirty (30) days after (y) City and OIFA have reviewed and approved the Invoice, and (z) City has received sufficient funds from OIFA under the Grant Agreement to pay the amount due under the Invoice. City's payment will be accepted by Contractor as full compensation for performing the Services to which the Invoice relates. No compensation will be paid by City for any portion of the Services not performed. Notwithstanding anything contained in this Agreement to the contrary, total compensation payable by City under this Agreement for the performance of the Services will not exceed \$_____.

2.2 No Benefits; No Reimbursement. City will not provide any benefits to Contractor, and Contractor will be solely responsible for obtaining Contractor's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Contractor will provide, at Contractor's cost and expense, all materials, equipment, and supplies necessary or appropriate to perform the Services. City will not reimburse Contractor for any expenses Contractor incurs to perform the Services.

3. Relationship.

3.1 Independent Contractor. Contractor is an independent contractor of City. Contractor is not an employee of City. Contractor will be free from direction and control over the means and manner of performing the Services, subject only to the right of City to specify the desired results. This Agreement does not create an agency relationship between City and Contractor and does not establish a joint venture or partnership between City and Contractor. Contractor does not have the authority to bind City or represent to any person that Contractor is an agent of City. Contractor has the authority to hire other persons to assist Contractor in performing the Services (and has the authority to fire such persons).

3.2 Taxes; Licenses. City will not withhold any taxes from any payments made to Contractor, and Contractor will be solely responsible for paying all taxes arising out of or resulting from Contractor's performance of the Services, including, without limitation, income, social security, workers' compensation, and employment insurance taxes. Contractor will be solely responsible for obtaining all licenses, approvals, and certificates necessary or appropriate to perform the Services.

4. Representations; Warranties; Covenants.

In addition to any other Contractor representation, warranty, and/or covenant made in this Agreement, Contractor represents, warrants, and covenants to City as follows:

4.1 Authority; Binding Obligation; Conflicts. Contractor is duly organized, validly existing, and in good standing under applicable Oregon laws. Contractor has full power and authority to sign and deliver this Agreement and to perform all Contractor's obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms. The signing and delivery of this Agreement by Contractor and the performance by Contractor of all Contractor's obligations under this Agreement will not (a) breach any agreement to which Contractor is a party, or give any person the right to accelerate any obligation of Contractor, (b) violate any law, judgment, or order to which Contractor is subject, or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

4.2 Quality of Services. Contractor will perform the Services to the best of Contractor's ability, diligently, in good faith, in a professional manner, free from errors, and consistent with the terms and conditions contained in this Agreement and the Grant Agreement. The Services will be performed in accordance with the Laws (as defined below). Contractor will be solely responsible for the Services. Contractor will make all decisions called for promptly and without unreasonable delay. All materials and documents prepared by Contractor will be accurate, complete, unambiguous, prepared properly, and in compliance with the Laws.

4.3 Insurance. During the term of this Agreement, Contractor will obtain and maintain, in addition to any other insurance required under this Agreement, the following minimum levels of insurance: (a) general liability insurance for all losses or claims arising out of or related to Contractor's performance of its obligations under this Agreement (including, without limitation, damages as a result of death or injury to any person or destruction or damage to any property) with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (b) comprehensive automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Contractor in connection with Contractor's performance of the Services with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (c) errors and omissions insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (d) employer liability insurance with limits of not less than \$500,000 per occurrence and in the aggregate; and (e) workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law. Each liability insurance policy required under this Agreement will be in form and content satisfactory to City, will list City (and City's Representatives (as defined below)) as an additional insured(s), and will contain a severability of interest clause; the workers' compensation insurance will contain a waiver of subrogation in favor of City. The insurance Contractor is required to obtain under this Agreement may not be cancelled without ten (10) days' prior written notice to City. Contractor's insurance will be primary and any insurance carried by City will be excess and noncontributing. Contractor will furnish City with appropriate documentation evidencing the insurance coverage (and provisions) and endorsements

Contractor is required to obtain under this Agreement upon Contractor's execution of this Agreement and at any other time requested by City. If Contractor fails to maintain insurance as required under this Agreement, City will have the option, but not the obligation, to obtain such coverage with costs to be reimbursed by Contractor immediately upon City's demand.

4.4 Compliance With Laws. C Contractor will comply and perform the Services in accordance with the Laws. Without otherwise limiting the generality of the immediately preceding sentence, Contractor will comply with each obligation applicable to Contractor and/or this Agreement under ORS 279B.220, 279B.225, 279B.230, and 279B.235, which statutes are incorporated herein by reference. Prior to the Effective Date, Contractor obtained all licenses, approvals, and/or certificates necessary or appropriate to perform the Services. The Services will be performed subject to and in accordance with all applicable requirements including, without limitation, those CDBG contract clauses attached hereto as Exhibit A. For purposes of this Agreement, the term "Law(s)" means all applicable federal, state, and local laws, regulations, restrictions, orders, codes, rules, and/or ordinances related to or concerning, whether directly or indirectly, Contractor, this Agreement, and/or the Services, including, without limitation, all applicable City ordinances, resolutions, policies, regulations, orders, restrictions, and guidelines, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

4.5 Indemnification. To the fullest extent permitted by the Laws, Contractor will defend, indemnify, and hold City, and each present and future City employee, officer, agent, and representative (collectively, "City's Representatives"), harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of, whether directly or indirectly, the following: (a) damage, injury, and/or death to person or property caused directly or indirectly by Contractor (and/or Contractor's directors, officers, shareholders, employees, agents, representatives, and/or contractors); (b) Contractor's failure to pay any tax arising out of or resulting from the performance of the Services; and/or (c) Contractor's breach and/or failure to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement. Contractor's indemnification obligations provided in this Section 4.5 will survive the termination of this Agreement.

4.6 Assignment of Studies and Reports. Contractor will assign all studies, reports, data, documents, and/or materials of any kind produced under this Agreement to City upon the earlier of City's request or the termination of this Agreement. All copies of the materials provided to City will become the property of City who may use them without Contractor's permission for any proper purpose relating to the Services, including, without limitation, additions to or completion of the Services. Contractor will defend all suits or claims for infringement of patent, trademark, and/or copyright for which Contractor is responsible (including, without limitation, any claims which may be brought against City), and Contractor will be liable to City for all losses arising therefrom, including costs, expenses, and attorney fees.

4.7 Records. Contractor will maintain complete and accurate records concerning all Services performed, the number of hours each person spent to perform the Services, and all documents produced under this Agreement for a period of five years after the expiration or earlier termination of this Agreement. Contractor's records will be maintained in accordance with sound accounting practices. Contractor's records concerning the Services, including, without limitation, Contractor's time and billing

records, will be made available to City for inspection, copying, and/or audit immediately upon City's request.

4.8 Confidential Information. During the term of this Agreement, and at all times thereafter, Contractor will maintain all Confidential Information (as defined below) in the strictest confidence and will not directly or indirectly use, communicate, or disclose any Confidential Information to any person, or remove or make reproductions of any Confidential Information, except that Contractor may (a) use Confidential Information to perform the Services to the extent necessary, and (b) communicate or disclose Confidential Information in accordance with a judicial or other governmental order or as required by applicable law, but only if Contractor promptly notifies the city public works director of the order and complies with any applicable protective or similar order. Contractor will promptly notify the city public works director of any unauthorized use, communication, or disclosure of any Confidential Information and will assist City in every way to retrieve any Confidential Information that was used, communicated, or disclosed by Contractor and will exert Contractor's best efforts to mitigate the harm caused by the unauthorized use, communication, or disclosure of any Confidential Information. Upon the earlier of City's request or termination of this Agreement, Contractor will immediately return to City all documents, instruments, or materials containing any Confidential Information accessed or received by Contractor, together with all copies and summaries of such Confidential Information. If requested by City, Contractor will execute a written certification satisfactory to City pursuant to which Contractor will represent and warrant that Contractor has returned all Confidential Information to City in accordance with the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the terms of this Agreement do not operate to transfer any ownership or other rights in or to the Confidential Information to Contractor or any other person. For purposes of this Agreement, the term "Confidential Information" means all documentation, information, and/or materials identified by City as confidential and/or any documentation, information, and/or materials relating to or concerning City's future plans, business affairs, employment, legal, and litigation matters that need to be protected from improper disclosure, in whatever form (e.g., hard and electronic copies, etc.), that is received or assessed by Contractor; provided, however, the term "Confidential Information" does not include City's public records which are non-exempt public records under applicable federal, state, and/or local laws.

5. Term; Termination.

5.1 Term of Agreement. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect until _____, 20____, unless sooner terminated as provided in this Agreement. This Agreement may be extended by the parties' mutual written agreement (and approval of OIFA if required under the Grant Agreement).

5.2 Termination by Mutual Agreement or Prior Notice. Notwithstanding anything contained in this Agreement to the contrary, (a) this Agreement may be terminated at any time by the mutual written agreement of City and Contractor, and/or (b) City may terminate this Agreement for convenience and without cause by giving Contractor thirty (30) days' prior written notice of such termination.

5.3 Immediate Termination. Notwithstanding anything contained in this Agreement to the contrary, City may terminate this Agreement immediately upon notice to Contractor upon the happening of any of the following events: (a) Contractor engages in any form of dishonesty or conduct

involving moral turpitude related to Contractor's independent contractor relationship with City or that otherwise reflects adversely on the reputation or operations of City; (b) Contractor fails to comply with any applicable law related to Contractor's independent contractor relationship with City; (c) continuous or repeated problems occur in connection with the performance of the Services; and/or (d) Contractor breaches and/or otherwise fails to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement. The determination as to whether any of the aforementioned events have occurred will be made by City in its sole discretion.

5.4 Consequences of Termination. Upon termination of this Agreement, City will not be obligated to reimburse or pay Contractor for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments. Within a reasonable period of time after termination of this Agreement (but in no event later than five days after termination), Contractor will deliver to City all materials and documentation, including raw or tabulated data and work in progress, related to or concerning the Services. Termination of this Agreement by City will not constitute a waiver or termination of any rights, claims, and/or causes of action City may have against Contractor.

5.5 Remedies. If a party breaches or otherwise fails to perform any of its representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Agreement, pursue all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

6. Miscellaneous.

6.1 Severability; Assignment; Binding Effect. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Contractor will not assign this Agreement to any person without City's prior written consent. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each party (and approved by OIFA if required under the Grant Agreement).

6.2 Attorney Fees; Dispute Resolution. If any arbitration or litigation is instituted to interpret, enforce, and/or rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. If any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), City and Contractor will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, either party may initiate a suit, action, arbitration, or other proceeding to interpret, enforce, and/or rescind this Agreement.

6.3 Governing Law; Venue. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon.

6.4 Attachments; Further Assurances; Notices. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. Time is of the essence with respect to Contractor's performance of its obligations under this Agreement. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation of delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

6.5 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Contractor. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Contractor has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.

6.6 Person; Interpretation; Execution. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of either party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document.

[end of agreement – signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and effective for all purposes as of the Effective Date.

CITY:

City of John Day,
an Oregon municipal corporation

CONTRACTOR:

By: _____
Its: _____

Federal Tax Id. No.: _____

By: _____
Its: _____

Federal Tax Id. No.: _____

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Schedule 1.1
Scope of Services

In addition to all other Services identified under this Agreement, Contractor will perform the following Services for and on behalf of City:

[to be inserted]

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Schedule 2.1
Fee Schedule

Subject to the terms and conditions contained in this Agreement, Contractor will perform the Services at the following hourly rates:

[to be inserted]

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Exhibit A
CDBG Contract Clauses

[attached]

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