CITY OF MOSIER
small enough to make a difference

PERSONAL SERVICES AGREEMENT FOR CITY ENGINEERING SERVICES

This Personal Services Agreement for City Engineering Services (the **"Agreement"**) is entered into by and between the City of Mosier, an Oregon municipal corporation (the **"City"**), and [legal name of consultant], an [state and business entity type] (**"Consultant"**).

RECITALS

A. The City requires City Engineering services for code development and enforcement, site development permit review and other standard city planning activities.

B. The City under its current public request for proposal will select the most qualified professional engineer based on the selection criteria in the RFP.

C. Consultant is qualified and capable to perform the services required.

D. The City desires to contract with Consultant to perform the services, and Consultant desires to perform the services, subject to the terms and conditions set forth in this Agreement.

Therefore, in consideration of the mutual covenants set forth below, the Parties agree as follows:

AGREEMENT

1. EFFECTIVE DATE AND DURATION

a. Effective Date. This Agreement shall take effect as of the latest signature date of the final party to sign (the **"Effective Date"**). Consultant shall not begin performance of the services under this Agreement until the City has provided written notice to Consultant to begin the work.

b. Term of Agreement. Unless renewed or earlier terminated as provided herein, this Agreement shall be for a term of ____ years, beginning on the Effective Date and ending automatically on _____- (the **"Initial Term"**) without any action required by either Party. Notwithstanding, this Agreement may be extended for one or more additional terms of one-year each (each, a **"Renewal Term"**), at the written request of either Party made prior to the end of the Initial Term or Renewal Term, as applicable, and subject to the written consent of the other Party. Any such Renewal Term, together with the Initial Term, shall be subject to the Not-To-Exceed Value identified in Section 3 of this Agreement (if any), unless alternative compensation terms are agreed in writing by an authorized representative of each Party.

2. SCOPE OF SERVICES

a. Scope of Work. Consultant shall perform the services set forth in **Exhibit A** (the **"Work"** or the **"Services"**). The City Manager (or the City Manager's designee) may direct changes, additions, or revisions to the specific Services, provided that such changes are generally within the Scope of Work, are reduced to a writing, and are mutually agreeable to the City Manager (or the City Manager's designee) and Consultant.

b. Standard of Care. Consultant shall perform the Work in the highest professional manner, and in accordance with industry standards practiced by reasonably prudent professionals performing similar services in the State of Oregon. Consultant shall employ methods that are generally accepted and used in the industry. Failure to meet the standard of care shall constitute a material breach of this Agreement. In the event that either Party discovers errors in the Work, and in addition to any other remedies available to the City, Consultant agrees that it shall perform any additional Work as necessary to correct the errors, as determined by either the City or by Consultant, without undue delay and without additional cost to the City for the corrective Work.

   Consultant represents and warrants that, at all times during the performance of this Agreement, Consultant and all persons working for or on behalf of Consultant under this Agreement, shall be qualified, professionally competent, adequately insured, and duly licensed to perform the Services under this Agreement. Consultant shall provide the City with documentation of any licensures, certifications, or registrations of such persons on request. Failure of any person to maintain a required license, certification, or registration during their performance of this Agreement shall constitute a material breach.

c. Key Personnel. As a material inducement to enter into this Agreement, the City has relied on the promise that certain individuals working for or on behalf of Consultant will be the primary persons responsible for undertaking the performance of the Work under this Agreement (**"Key Personnel"**). Consultant agrees that Key Personnel shall be the primary persons performing Work under this Agreement and that a breach of this provision shall be a reason to terminate the Agreement with cause. Key Personnel of Consultant consists of the following named individuals: _____, _____, _____.

3. COMPENSATION

a. Amount. The City agrees to pay Consultant the fees and rates for Work performed as set forth in **Exhibit B**, subject to the Not-To-Exceed Value provided herein. Payment by the City shall be the full and complete compensation for the Work performed and Services rendered, including all labor, materials, supplies, equipment, reimbursable expenses, and incidentals necessary to complete the Work.

b. Not-To-Exceed Value. The maximum payable compensation under this Agreement from the City to Consultant shall not exceed $_____. The City shall make no payments to Consultant that exceed this amount without prior authorization of the Mosier City Council, which authorization is at the sole discretion of the City. Consultant shall bear all costs, expenses, fees, and liabilities incurred in excess of the Not-to-Exceed Value unless approved

by a duly authorized representative of the City in writing. Under no circumstances shall the City be obligated to pay any amount in excess of the Not-to-Exceed Value except as authorized under this provision.

c. Invoices; Payments. Consultant shall submit invoices for Work actually performed to: NAME, at EMAIL/ADDRESS. Invoices shall include a description of the Work performed corresponding to each invoiced amount. Invoices should be submitted monthly. Consultant shall provide adequate records and/or receipts for invoices to substantiate the charges. Consultant shall complete the Work, submit invoices, and maintain records for billings in accordance with generally accepted accounting principles. The City will remit payment within thirty (30) days of receipt of the invoice. Payment shall not be considered acceptance or approval by the City of any Work or waiver of defects therein.

d. Disputes. In the event the City, in good faith, disputes an invoiced item, the City shall provide written notice to Consultant of the disputed item and shall pay the undisputed portion of the invoice.

4. TERMINATION

a. Without Cause. The City may terminate this Agreement without cause by providing thirty (30) days' advance written notice to Consultant, which notice shall include the effective date of termination. The Parties, by mutual agreement, may terminate this Agreement at any time. If the Agreement is terminated under this provision Consultant shall submit a final invoice to the City within fourteen (14) days of the effective date of termination.

b. For Cause. Either Party may terminate this Agreement in event of a breach of the Agreement by the other Party. Prior to such for-cause termination, the Party seeking to terminate the Agreement shall provide the other Party with written notice of the breach and their intent to terminate the Agreement. If the breaching Party has not fully cured the breach within ten (10) days of the notice of breach, then the terminating Party may provide written notice of termination, which notice shall specify the date of termination and shall be determined by the terminating Party.

c. Breach by Consultant. In the event of a breach of this Agreement by Consultant, the City may complete the Work or remedy the issue itself, by agreement with another Consultant, or by a combination thereof. The City may deduct all costs of completing the Work and remedying the issues caused by the breach from the remaining unpaid balance of the fee(s) owed to Consultant under this or other Agreements, if any.

d. Immediate Termination by the City for Cause. The City may terminate this Agreement, in whole or in part, immediately upon written notice to Consultant, or at such a later date as the City may establish in such notice, upon the occurrence of any of the following events:
    i. The City fails to receive funding, appropriations, or other expenditure authority at levels sufficient to pay for Consultant's Work.

ii. Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the Work under this Agreement is prohibited, or the City is prohibited from paying for such Work from the intended funding source.

iii. Consultant commits any material breach or default of any covenant, warranty, obligation, representation, or requirement under this Agreement; fails to perform the Work under this Agreement within the time specified herein or any extension thereof; or fails to perform the Work to the satisfaction of the City; and such breach, default, or failure is not cured within ten (10) business days after delivery of notice of breach by the City, or such longer period as the City may specify in the notice.

e. Work Performed prior to Termination. Any Work performed by Consultant after the date of the notice of termination and before the effective date of termination must be pre-approved by the City in writing, prior to the Work.

5. INDEPENDENT CONSULTANT

The Parties agree that Consultant is an independent contractor. Although City reserves the right to: (i) specify the desired work product; (ii) determine the delivery schedule for the Work to be performed; and (iii) evaluate the quality of the completed performance of the Work, City cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for obtaining and maintaining all business registrations and professional occupation licenses required by state or local law to perform the Work. Consultant shall furnish the tools, labor, materials, and equipment necessary to perform the Services required. Consultant shall be entitled to no compensation other than the compensation provided under this Agreement. Consultant shall be responsible for all federal and state taxes applicable to any payments made under this Agreement. Consultant is not an employee of the City for purposes of ORS 30.285, workers' compensation laws, public employee benefits laws, or any other law, and is not entitled to indemnification by the City or any defense by the City for any reason.

6. ACCESS TO RECORDS

Consultant shall maintain, and the City (and its authorized representatives) shall have access to, all books, documents, papers, and records of Consultant which relate to this Agreement. Copies of applicable records shall be made available upon request by the City, and immediately upon termination of this Agreement, regardless of the reason for termination. Consultant shall maintain all City records in its custody or control in strict confidentiality and shall not provide to or allow access by any third parties without City's prior written consent unless required by law. In the event Consultant is required by law to provide access to third parties, Consultant shall first provide notice to the City and provide the City with reasonable time and opportunity to determine or challenge whether such access is indeed required.

7. OWNERSHIP OF WORK

a. All final work products of Consultant that are prepared for the City, or result from this Agreement, are the property of the City. Use of any final work product produced under this

Agreement by Consultant other than for use under this Agreement is prohibited without the written consent of the City.

b. The City shall own all proprietary rights, including but not limited to copyrights, trade secrets, patents, and all other intellectual or other property rights in and to such final work products. All final work products shall be considered "works made for hire" under the provisions of the United States Copyright Act and all other equivalent laws. Consultant shall indemnify, defend, and hold harmless the City from and against any and all claims that the work products infringe, misappropriate, or otherwise violate any intellectual property right of any party.

c. Any materials or information that may be provided to Consultant and identified as **"Confidential"** by the City shall be treated as confidential by Consultant and shall not be disclosed to any other person by Consultant, either directly or indirectly, orally or in writing, without the express, advance, written permission of the City. Consultant shall promptly return all materials provided by the City upon request by the City.

8. ASSIGNMENT

Consultant shall not subcontract for any of the Work, nor shall assign, sell, transfer, or pledge this Agreement or the rights or obligations hereunder for any of the Work, nor shall use the services of a temporary employment services company to perform the Work.

9. NO THIRD-PARTY BENEFICIARIES

The City and Consultant are the only parties to this Agreement, and are the only parties entitled to enforce its terms.

10. INSURANCE

a. Consultant shall procure and maintain insurance in the form and amounts that are acceptable to the City in full force and effect throughout the term of this Agreement. Certificates of insurance shall be provided to the City upon request. The required insurance shall cover risks arising directly or indirectly out of Consultant's activities or work under this Agreement including insuring against claims for injuries or damages to persons or property. Consultant shall maintain commercial general liability insurance, professional liability insurance, and automobile insurance.

b. Consultant's insurance shall include provisions that such insurance is primary insurance with respect to the interests of the City and that any other insurance maintained by the City is excess and not contributory insurance with the insurance required under this Agreement. The commercial general liability insurance and automobile insurance policies shall include the naming of the City, its officers, directors, agents, and employees as additional insureds with respect to this Agreement. There shall be no cancellation, material change, or intent not to renew insurance coverage without first providing 30 days' written notice to the City.

11. INDEMNITY

Consultant shall defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, actions, loss, damages, costs, and expenses arising out of or resulting from the negligent or intentional acts, errors, or omissions of Consultant or its officers, employees, or agents. Acceptance of work products by City does not relieve Consultant of any responsibility for neglect or wrongful design deficiencies, errors, or omissions.

12. GOVERNING LAW

This Agreement shall be governed by and construed under the laws of the State of Oregon. The Parties agree that the Wasco County Circuit Court in the State of Oregon shall have sole jurisdiction and venue for any claim, dispute, or legal proceeding arising under or relating to this Agreement.

13. ATTORNEYS' FEES

In the event that a suit or action is instituted to enforce or interpret the terms of this Agreement, the prevailing party shall recover its attorneys' fees, including those incurred on all appeals, as may be ordered by a court of competent jurisdiction.

14. COMPLIANCE WITH LAW

a. Consultant shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement, including without limitation: ORS 279B.020 (labor hours), ORS 279B.220 (payment conditions), ORS 279B.230 (medical care and workers' compensation), ORS 279B.235 (labor hours and pay rates), ORS 279B.225 (salvaging of materials), ORS 279B.045 (tax laws), and ORS 646A.600 through 646A.628 (identity theft protection).

b. Consultant shall comply with ORS 652.220 (prohibition on discriminatory wage rates). Compliance with such provision is a material element of this Agreement. Failure to comply with this provision is a breach and the City may terminate this Agreement for cause.

c. Consultant shall pay Consultant's employees working under this Agreement at least time and a half for all overtime the employees work in excess of 40 hours in any one week, except for employees who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

d. Consultant shall pay to the Oregon Department of Revenue all sums withheld from employees under ORS 316.167.

e. Consultant may not prohibit any of Consultant's employees from discussing wage rates, salary, benefits, or other compensation with another employee or with any other person, and

may not retaliate against an employee who discusses wage rates, salary, benefits, or other compensation with another employee or person.

f. Consultant shall maintain, at its own expense, worker's compensation insurance for all subject workers as required by ORS Chapter 656 and meeting the minimum requirements therein.

g. Consultant shall make payment promptly as due to all persons supplying Consultant with labor or materials for Work under this Agreement.

h. Consultant represents and warrants that Consultant has complied with, and will continue to comply with, all Oregon state and local tax laws before the execution of this Agreement and throughout the term of this Agreement. Failure to comply with this provision is a breach and the City may terminate this Agreement for cause.

i. Consultant expressly agrees, as applicable, to comply with: (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. A condition or clause required by law to be in this Agreement shall be considered included by these references.

j. Consultant agrees to complete a Request for Taxpayer Identification Number and Certification (W-9 Form) as a condition of the City's obligation to make payment. Failure to comply with any of the provisions under this Section is a breach of this Agreement and the City may terminate this Agreement for cause. Consultant shall provide the City its employer identification number, as designated by the federal Internal Revenue Service, or social security number, as the City deems applicable.

k. Consultant shall not permit any lien or claim to be filed or prosecuted against the City or the State of Oregon, or against any Oregon county, school City, municipality, municipal corporation, or political subdivision thereof, on account of any labor or materials furnished.

15. NO DISCRIMINATION

The City is an Equal Opportunity Employer and requires that all persons doing business with the City are also Equal Opportunity Employers. Consultant agrees that it shall not engage in discrimination against any employee or applicant for employment on the basis of race, color, religion, national origin, age, marital status, gender, parenthood, pregnancy, genetics, mental or physical disability, veteran status, sexual orientation, gender identity, or source of income in all aspects of employment, including in the hiring, promotion, transfer, advertisement,

layoff, termination, rate pay, training, employment references, and terms and conditions of employment.

16. WAIVER

Any waiver by either Party of the strict performance of any terms of this Agreement shall not be construed as a waiver of that Party's right to subsequently require strict performance of the same or any other provision of this Agreement.

17. NOTICE ADDRESS

The Parties agree that any written notice required by this Agreement may be served in person, by first class certified mail, or by e-mail to the address listed below. Service by mail shall be deemed complete when the notice is deposited to the U.S. Postal Service at an authorized government-owned receptable with the property postage affixed thereto. Service by e-mail shall be deemed delivered at the later of: when sent, if transmitted during the recipient's normal business hours and no automated message is received indicating delivery failure; or when confirmed received by the recipient's server. Each Party shall provide the other Party with current notice address information.

If to the City:
NAME
208 Washington Street
P.O. Box 456
Mosier, OR 97040
E-mail: XXX

If to Consultant:
NAME
Address
Address
City, State, Zip
E-mail: XXX

18. COMPLETE AGREEMENT

a. Incorporation. The Recitals and all Exhibits referenced throughout this Agreement are incorporated herein and together form the complete Agreement between the Parties. As of the Effective Date, this Agreement shall supersede and replace all other agreements between the Parties or between the City and any other party or *Key Personnel* concerning the Services provided hereunder.

b. Severability. If any paragraph, provision, or clause in this Agreement is found or held to be invalid or unenforceable by a court of competent jurisdiction, such paragraph, provision, or clause shall be severed, and the remainder of the Agreement shall be valid and enforceable. In such event the Parties shall in good faith negotiate a substitute, valid, enforceable provision which most closely effects the Parties' intent in entering into the Agreement.

c. Execution. The Parties shall execute this Agreement by a duly authorized representative of each Party as indicated by the signature lines below. This Agreement may be executed in duplicate, with each copy constituting one and the same Agreement.

d. Binding on Successors. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, and their respective successors, if any.

e. Amendment. This Agreement may be modified only by mutual written agreement of an authorized representative of each Party.

IT IS AGREED:

CONSULTANT	**CITY OF MOSIER**
Signature: _____	Signature: _____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

EXHIBIT A

Scope of Work

EXHIBIT B
Compensation: Rates/Fees