



Home of the Tucuman River Recovery Wildlife Refuge

Community Development Division  
Engineering Department  
22560 SW Pine St.  
Sherwood, OR 97140  
503-925-2309

### CONTRACT FOR PROFESSIONAL SERVICES

**PROJECT NAME:** WOODHAVEN PARK – PHASE 2 DESIGN

**CONTRACT PARTIES:** City of Sherwood [hereafter called City] and Harper Houf Peterson Righellis, Inc. (HHPR) [hereafter called Consultant]

**C.O.S. PROJECT MANAGER:** Bob Galati PE, City Engineer

**ACCOUNT #:** 7620 **FUND #:** 3 **DEPT:** 57 **REV SOURCE:** 0 **JOB #:** 8081  
**VENDOR #:** 10181

**SCOPE of WORK:** see attachment

**SCHEDULE of WORK:** effective date: 01/20/15 expiration date: 01/20/16

**PAYMENT:** City agrees to pay Consultant for the identified services a sum not to exceed \$108,593.00 for the scope of work identified by attachment

### CONSULTANT DATA, REGISTRATION, and SIGNATURE

**CONSULTANT FIRM:** Harper Houf Peterson Righellis Inc. (HHPR)  
**ADDRESS:** 205 SW Spokane Street, Suite 200, Portland, Oregon 97202  
**VOICE:** (503) 221-1131 **FAX:** (#)  
**CONTACT:** Stefanie Slyman, AICP  
**TITLE:** Project Manager

I, the undersigned, agree to perform the work outlined in this Contract in accordance to the terms and conditions listed on pages 2-5 and made part of this Contract, and in accordance with the exhibits attached and made part of this Contract. I certify, under penalty of perjury, that I/my business is not in violation of any Oregon tax laws; and certify that I am an independent contractor as defined in ORS 670.600.

**CONSULTANT:** Benjamin K. Aspell signature 1/6/2015 date

### CITY OF SHERWOOD APPROVALS

**CITY ENGINEER:** \_\_\_\_\_ signature \_\_\_\_\_ date

**COMMUNITY SERV. DIR:** \_\_\_\_\_ signature \_\_\_\_\_ date

**FINANCE DIRECTOR:** \_\_\_\_\_ signature \_\_\_\_\_ date

**CITY MANAGER:** \_\_\_\_\_ signature \_\_\_\_\_ date

## STANDARD CONTRACT PROVISIONS

**1. Access to Records**

The Consultant shall maintain, and the City of Sherwood ("City") and its duly authorized representatives shall have access during normal business hours to the books, documents, papers, and records of the Consultant which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon reasonable request. Payment for cost of copies is reimbursable by the City.

**2. Audits**

(a) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by section 1, **Access to Records**. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

(b) If an audit discloses that payments to the Consultant were in excess of the amount to which the Consultant was entitled, then the Consultant shall repay the amount of the excess to the City.

(c) If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies provided under section 5, **Early Termination of Contract** and section 7, **Remedies**.

**3. Effective Date and Duration**

The passage of the Contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance that has not been cured.

**4. Funds**

The City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this Contract.

**5. Early Termination of Contract**

(a) The City and the Consultant, by mutual writing, may terminate this Contract at any time.

(b) The City, on thirty (30) days written notice to the Consultant, may terminate this Contract for any reason deemed appropriate in its sole discretion.

(c) Either the City or the Consultant may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

**6. Payment on Early Termination**

(a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Contract** hereof, the City shall pay the Consultant for work performed in accordance with the Contract prior to the termination date.

(b) In the event of termination under subsection 5(c), **Early Termination of Contract** hereof, by the Consultant due to a breach by the City, the City shall pay the Consultant as provided in subsection (a) of this section.

(c) In the event of termination under subsection 5(c), **Early Termination of Contract** hereof, by the City due to a breach by the Consultant, the City shall pay the Consultant as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), **Remedies**.

(d) In the event of early termination, all of the Consultant's work product will become and remain property of the City.

**7. Remedies**

(a) In the event of termination under subsection 5(c), **Early Termination of Contract**, hereof, by the City due to a breach by the Consultant, the City may complete the work either itself, by Contract with another consultant, or by a combination thereof.

(b) The remedies provided to the City under section 5, **Early Termination of Contract** and section 7, **Remedies** for a breach by the Consultant shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.

(c) In the event of breach of this Contract by the City, the Consultant's remedy shall be limited to termination of the Contract and receipt of payment as provided in section 5(c), **Early Termination of Contract** and section 6(b), **Payment on Early Termination** hereof.

**8. Subcontracts and Assignment**

Consultant shall not subcontract, assign or transfer any of the work scheduled under this Contract, without the prior written consent of the City. Notwithstanding City approval of a sub-consultant, the Consultant shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Consultant hereunder. The Consultant agrees that if sub-consultants are employed in the performance of this Contract, the Consultant and its sub-consultants are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

**9. Compliance with Applicable Law**

In connection with its activities under this Contract, Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws and regulations.

**10. Indemnity - Standard of Care**

If Consultant's services involve engineering or planning consulting, the standard of care applicable to Consultant's service will be the degree of skill and diligence normally employed by professional engineers or planning consultants performing the same or similar services at the time such services are performed. Consultant will re-perform any services not meeting this standard without additional compensation. Consultant acknowledges responsibility for liability arising out of the performance of this Contract and shall hold City harmless from and indemnify City for any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, activities, or services in the course of performing this Contract.

**11. Insurance**

Consultant shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Consultant, the City, its Councilors, officers, agents, and employees. Unless modified by the City Manager, coverage shall include personal injury, bodily injury, including death, and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Consultant's operations, in an amount not less than \$1,000,000 combined single limit per occurrence. Such insurance shall name the City as an additional insured. Consultant certifies that Consultant has qualified for State of Oregon Workers' Compensation coverage for all Consultant's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier insured employer as provided by ORS 656.407 or as a self-insured employer. Unless modified or waived by the City Manager, 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 and arising out of or resulting from Consultant's negligent acts, omissions, activities or services, in an amount not less than \$1,000,000 combined single limit per occurrence. Such insurance shall be endorsed to include contractual liability. All policies will provide for not less than thirty (30) days' written notice to the City before they may be canceled. Upon request, Consultant shall furnish the City certificates evidencing the date, amount, and type of insurance required by this contract.

**12. Ownership of Work Product**

All work products of the Consultant, which result from this Contract are the exclusive property of the City. The City shall not use these products for other projects outside the scope of this Contract without written permission of the Consultant; provided, that Consultant is hereby granted an irrevocable, royalty free, worldwide, perpetual license to use, reproduce, copy, distribute and make derivatives of its work product, regardless of whether Consultant has resigned, this Contract has been terminated, Consultant's scope of services has been modified, or Consultant's services under this Contract have been completed.

**13. Nondiscrimination**

Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Consultant also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

**14. Successors in Interest**

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

**15. Severability**

The parties agree that if any term or provision of this 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. Waiver**

The failure of the City to enforce any provision of this Contract shall not constitute a waiver by the City of that or any other provision.

17. **Errors**  
The Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost.
18. **Governing Law**  
The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon, without regard to conflicts of law principles. Any action or suits involving any question arising under this Contract must be brought in the appropriate court in Washington County, Oregon. Any trial will be to the court without a jury.
19. **Amendments**  
The City and the Consultant may amend this Contract at any time only by written amendment executed by the City and the Consultant. Unless otherwise provided, if the original Contract required a Resolution, any amendment that increases the amount of compensation payable to the Consultant, exceeding the amount authorized in the previous Resolution, must be approved by Resolution of the City Council. If the original Contract did not require a Resolution, the City Manager, or City Engineer in certain instances, may approve an amendment increasing the amount of compensation, provided the total Contract price falls within the expenditure thresholds established in Resolution 2001-006. The City Engineer may agree to and execute any other amendment that does not affect Contract price, on behalf of the City, including modifications to scope of service or time of performance.
20. **License**  
Prior to beginning work under this Contract, the Consultant shall provide professional registration number in the space provided on page one of this Contract, if required by the City.
21. **Payment to Vendors and Sub-consultants**  
Consultant must promptly pay any persons supplying labor or material to Consultant in its performance of the work under this Contract. Consultant will not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished to Consultant.
22. **Exhibits**  
Each document that is attached to this Contract as an Exhibit shall be labeled with an Exhibit number and listed below. Provisions and covenants contained in Exhibits are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein. If any item in an Exhibit contradicts this Contract, this Contract shall take precedence over the conflicting item in the Exhibit.
- a. **List of Exhibits**  
Exhibit A – Scope of Work  
Exhibit B – Fee Schedule
23. **Merger Clause**  
This Contract and attached exhibits constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Consultant, by the signature of its authorized representative, hereby acknowledges that he or she has read this Contract, understands it and agrees to be bound by its terms and conditions.
24. **Mediation**
- a. Should any dispute arise between the parties to this Contract it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation.
- b. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Washington County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.
25. **Miscellaneous Terms**
- a. Consultant Identification. Consultant shall furnish to City Consultant's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Consultant's Social Security number.

- b. Duty to Inform. Consultant shall give prompt written notice to City if, at any time during the performance of this Contract, Consultant becomes aware of actual or potential problems, faults, or defects in the project, any nonconformance with the Contract, or with any federal, state, or local law, rule, or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Consultant shall constitute neither agreement with nor acquiescence in Consultant's statement or claim, and shall not constitute a waiver of any of City's rights.
- c. Independent Contractor. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Contract.
- d. Industrial Accident Fund. Consultant shall pay all contributions or amounts due the Industrial Accident Fund from Consultant incurred in the performance of this Contract, and shall ensure that all subcontractors pay those amounts due from the subcontractors.
- e. Income Tax Withholding. In accordance with ORS 316.167, Consultant shall pay to the Oregon Department of Revenue all sums withheld from employees.

***[SIGNATURES ON COVER PAGE TO CONTRACT]***