

RESOLUTION NO. 2022 - 64

A Resolution approving the award of a Professional Services Contract to David Evans and Associates, Inc. for City Engineer Services.

RECITALS:

Whereas, On August 19, 2022, two proposals were received for the City Engineer Services Request for Proposal;

Whereas, David Evans and Associates, Inc. met all of the requirements of the Request for Proposals and was determined to be the most qualified proposer to provide the requested services;

Whereas, The estimate for this scope of work is Not to Exceed \$100,000 per year;

Whereas, Project funding is covered through salary savings for the budgeted, vacant City Engineer position.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MCMINNVILLE, OREGON, as follows:

1. That entry into a Professional Services Contract with David Evans and Associates, Inc. for City Engineer Services, in the amount of up to \$100,000 per year is hereby approved.
2. The City Manager is hereby authorized and directed to execute the contract with David Evans and Associates, Inc.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 11th day of October 2022 by the following votes:

Ayes: Geary, Garvin, Menke, Peralta, Chenoweth, Payne

Nays: _____

Approved this 11th day of October 2022.



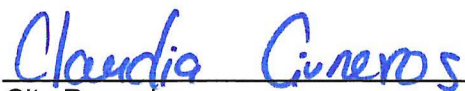
MAYOR

Approved as to form:



City Attorney

Attest:



City Recorder

**CITY OF McMinnville
PROFESSIONAL SERVICES AGREEMENT
ON-CALL CITY ENGINEERING SERVICES**

This On-Call City Engineering Services Agreement (“Contract”) is made and entered into on this 18th day of October 2022 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **David Evans and Associates, Inc.**, a(n) Oregon Corporation (hereinafter referred to as “Consultant”).

RECITALS

WHEREAS, the City requires on-call City Engineering services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

The City is periodically in need of a variety of City Engineer service calls, some of which may be on short notice. Consultant agrees to be available and to perform periodic on call services, as more particularly described in the Scope of Work, attached hereto as **Exhibit A** and incorporated by reference herein (the “Services”).

Section 2. Term

The term of this Contract shall be from the Effective Date for a period of three (3) years (“Term”) or until the Compensation Amount is exhausted, whichever shall occur first. The City shall have the option to extend the term of this Agreement for up to an additional two (2) years, in one year increments, which extension(s) must be documented in writing and signed by the parties.

Section 3. Rates/Services Scope

3.1. The City has budgeted a maximum of One Hundred Thousand DOLLARS per year (\$100,000 per year) (“Compensation Amount”) for On-Call Services for the Term. On-Call Services will be provided on a time and materials basis, in accordance with the Rate Schedule set forth on **Exhibit B**. If Consultant charges for travel time, the amount charged for travel time or any mileage charged for travel time shall only be paid as set forth on **Exhibit B**. Otherwise, the

Rates on **Exhibit B** are all inclusive and include, but are not limited to, all expenses, wages plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits. Consultant will not provide or bill for services in excess of the Maximum sum of \$100,000.00 per year set forth above without a written amendment or authorization from the City Manager for such additional services and charges.

3.2. Consultant will be paid for a Service upon satisfactory completion of the Service and within thirty (30) days of receipt of an itemized invoice, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

Section 4. Project Managers

The City's Project Manager is Anne Pagano. Consultant's Project Manager is Sarah Jones.

Section 5. Project Information

No information, news, or press releases related to the Scope of Work, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 6. Duty to Inform

If at any time during the performance of this Agreement or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults, or defects in the Scope of Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations, Consultant shall give prompt written notice thereof to the City's Project Manager.

Section 7. Subcontractors and Assignments

Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City. Any attempted assignment of this Agreement without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City. Consultant is approved to use DKS as a subcontractor. Consultant hereby represents that no other subcontractors will be used on the Services unless first preapproved, in writing, by the City.

Section 8. Consultant Is Independent Contractor

Except as otherwise mandated by state law, the performance of Services under this Agreement is at Consultant's sole risk. All damages or loss to Services, equipment, or materials incurred during the performance of the Services shall be at Consultant's sole risk. Consultant is an independent

contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 3** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project. Consultant hereby represents that no subcontractors will be used on the Services unless first preapproved, in writing, by the City.

Section 9. Consultant Responsibilities

9.1. Consultant must make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

9.2. Consultant must comply with all Oregon and federal wage and hour laws, including the Bureau of Labor and Industries (BOLI) wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on **Exhibit B** as a reimbursable expense item not included in the Compensation Amount, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Consultant's Compensation Amount is based.

9.3. No person shall be discriminated against by Consultant in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City. Consultant shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Agreement or to the implementation of the Services. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Agreement or the implementation of the Services: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the

Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

9.4. Consultant shall make payment promptly, as due, to all parties supplying to such Consultant labor or material for the prosecution of the Services provided for in the Agreement.

9.5. Consultant shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums which Consultant agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

9.6. With certain exceptions listed below, Consultant shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

9.6.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

9.6.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

9.6.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

9.7. Consultant must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Services on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

9.8. The hourly rate of wage to be paid by any Consultant to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

9.9. Consultant, and all employers working under the Agreement, are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 unless otherwise exempt under ORS 656.126.

9.10. In the performance of this Agreement, Consultant shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Agreement, including but not limited to ORS 279C.525, if applicable. If new or amended statutes, ordinances, or regulations are adopted, or Consultant encounters a condition not referred to in this agreement not caused by Consultant, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the preservation of the environment, both the City and Consultant shall have all the rights and obligations set forth in ORS 279C.525.

9.11. Consultant shall be liable for any fine imposed against Consultant, the City, or the Services as a result of a violation of any laws or permitting requirements by Consultant or any suppliers.

9.12. Consultant will work cooperatively with other contractors who may be working on the same project and other contractors working on other on-call services for the City.

Section 10. Contract Requirements Applicable to All Task Orders

10.1. All Services shall comply in every respect with City and State building code requirements, City of McMinnville Public Works Standards, and all applicable Oregon laws.

10.2. Consultant shall have and maintain all licenses as may be necessary or required for the performance of the Services

10.3. If there are any questions regarding the Services to be done, it will be the responsibility of Consultant to contact the City's Project Manager and request clarification before proceeding.

10.4. In the event of accidental property damage, it will be Consultant's responsibility to return the property to its original condition, at no cost to the City.

Section 11. Indemnity

11.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall, defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim to the extent resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement. The review, approval, or acceptance by the City, its Contract Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this

Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 11.2**. As used herein, the term “Consultant” applies to Consultant and its own agents, employees, and suppliers.

11.2. Standard of Care. In the performance of the Services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by members of Consultant’s profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant’s re-performance of any Services, even if done at the City’s request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant’s failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

Section 12. Insurance

12.1. Insurance Requirements. Consultant must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant’s activities or Services hereunder. The amount of insurance carried is in no way a limitation on Consultant’s liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

12.1.1. Commercial General Liability Insurance. Consultant shall obtain, at Consultant’s expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an “occurrence” form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. The required general liability limits may be satisfied in combination with an excess liability follow-form policy. All of the foregoing coverages must be carried and maintained at all times during this Contract.

12.1.2. Business Automobile Liability Insurance. If Consultant will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**, which may be satisfied in combination with an excess liability follow-form policy.

12.1.3. Workers Compensation Insurance. Consultant and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to

provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

12.1.4. Professional Liability Coverage. Consultant agrees to carry Professional Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than \$2,000,000 per claim and in the aggregate. Consultant shall maintain this insurance for damages alleged to be as a result of negligent acts, errors, or omissions of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Contract, and coverage will remain in force for a period of at least three (3) years after termination of the Contract.

12.1.5. Insurance Carrier Rating. Coverages provided by Consultant must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

12.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant's liabilities hereunder in the Commercial General Liability and Automobile Liability insurance coverages. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Commercial general liability and automobile coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of McMinnville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies that does not meet the requirement of this agreement required hereunder.

12.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Consultant shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage to not meet the requirements of this Agreement during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the

City, requiring the carrier to notify the City of such termination or change in insurance coverage that does not meet the requirements of this Agreement, as provided above.

12.2. Primary Coverage. The commercial general liability and automobile liability coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance.

Section 13. Early Termination; Default

13.1. This Contract may be terminated for convenience at any time by the City. Upon such termination, Consultant will be paid to complete any Services in process and, thereafter, this Contract shall be deemed terminated.

13.2. This Contract may also be terminated if Consultant breaches this Contract and fails to immediately cure the breach within one (1) day of receipt of written notice of the breach from the City.

13.3. If the City terminates this Contract in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

13.4. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include, the day of termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

13.5. Termination under any provision of this section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof for which Consultant has received payment or the City has made payment.

Section 14. Suspension of Work

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of

such delay or suspension unless the reason for the delay is within Consultant's control. Should the City suspend, delay, or interrupt the Services and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay and compensation, if appropriate, as negotiated.

Section 15. Contract Modification

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Consultant.

Section 16. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, or submitted electronically with delivery receipt, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of McMinnville
 Attn: Anne Pagano (anne.pagano@mcminnvilleoregon.gov)
 230 NE Second Street
 McMinnville, OR 97128

To Consultant: David Evans and Associates
 Attn: Sarah Jones (sarah.jones@deainc.com)
 2100 S. River Pkwy., Suite 100
 Portland, OR 97201

Section 17. Miscellaneous Provisions

17.1. Integration. This Contract, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control.

17.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

17.3. No Assignment. Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

17.4. Adherence to Law. This Contract shall be subject to, and Consultant shall adhere to, all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements.

17.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

17.6. Jurisdiction. Venue for any dispute will be in Yamhill County Circuit Court.

17.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such reasonable fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

17.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

17.9. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

17.10. Modification. This Contract may not be modified except by written instrument executed by Consultant and the City.

17.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract provided the Consultant's services must in all events be governed by the exercise of sound professional practices.

17.12. Calculation of Time. Except where the reference is to business days, 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 observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

17.13. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

17.14. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

17.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Contract gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

17.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

17.17. Interpretation. As a further condition of this Contract, the City and Consultant acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

17.18. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

17.19. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

17.20. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.


The Consultant and the City hereby agree to all provisions of this Contract.

CONSULTANT:

CITY:

David Evans and Associates, Inc.

CITY OF McMINNVILLE

By: DIGITALLY SIGNED 2022.09.27 08:41:37-07'00' By: 

Print Name: Sarah Jones Print Name: Jeff Towery

As Its: Associate As Its: City Manager

Employer I.D. No. 93-0661195

APPROVED AS TO FORM:

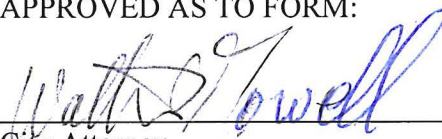

City Attorney
City of McMinnville, Oregon

Exhibit A

SCOPE OF WORK

1. Perform development reviews per City standards. May include review of plans, reports or calculations as submitted to the City for review.
 - a. Attend and provide comments at pre-application meetings, provide meeting minutes
 - b. Conduct a virtual meeting or phone call with staff to discuss comments if requested.
 - c. Perform secondary review to determine if previous comments have been adequately addressed.
 - d. If needed, meet with applicants to resolve issues with compliance with City standards.
2. Assist with reviews and management of public improvement projects including transportation, stormwater, wastewater and airport projects.
3. Assist with preparation of bid documents for public improvement projects. Projects may include transportation, utility, parks, buildings, or other public improvements.
4. Review, approve and sign Subdivision and Partition Plats.
5. Assist with Mercury Total Maximum Daily Load Plan implementation.
6. Provide Traffic Engineering review of development submittals and other traffic related concerns that arise within the City.
7. Perform administrative tasks including but not limited to drafting sewer and sidewalk letters.
8. Be present in the City's Community Development Center a minimum of one day every other week.
9. Prepare Staff Reports, Resolutions and other documents when required for City Council approval.
10. Represent the Engineering Division at City Council, Planning Commission, Airport Commission or other committee meetings as needed (in-person or virtual).
11. Assist with response to calls and concerns from the general public.
12. Provide engineering input and review of upcoming City Master Plans including the Wastewater Conveyance Plan update, Transportation System Plan update, and others.
13. Assist with RFP's for consultant procurement for upcoming engineering projects.
14. Provide mentorship for Engineering Project Managers and Technicians.
15. Perform other additional tasks to support City staffing needs.



DAVID EVANS
AND ASSOCIATES INC.

Exhibit B

Hourly Rate Schedule

Classification	Labor Billing Code	Hourly Rate
Admin 1	ADM1	\$ 92.00
Admin 2	ADM2	\$ 101.00
Admin 3	ADM3	\$ 112.00
Admin 4	ADM4	\$ 123.00
Admin 5	ADM5	\$ 136.00
CAD Tech 1	CAD1	\$ 95.00
CAD Tech 2	CAD2	\$ 102.00
CAD Tech 3	CAD3	\$ 113.00
CAD Tech 4	CAD4	\$ 130.00
CAD Tech 5	CAD5	\$ 136.00
Designer 1	DSG1	\$ 104.00
Designer 2	DSG2	\$ 116.00
Designer 3	DSG3	\$ 135.00
Designer 4	DSG4	\$ 149.00
Engineering Designer 1	END1	\$ 116.00
Engineering Designer 2	END2	\$ 130.00
Engineering Designer 3	END3	\$ 135.00
Engineer 1	ENG1	\$ 116.00
Engineer 2	ENG2	\$ 135.00
Engineer 3	ENG3	\$ 155.00
Engineer 4	ENG4	\$ 165.00
Engineer 5	ENG5	\$ 191.00
Engineer 6	ENG6	\$ 216.00
Engineer 7	ENG7	\$ 260.00
GIS Specialist	GISS	\$ 161.00
Landscape Architect 1	LAR1	\$ 119.00
Landscape Architect 2	LAR2	\$ 127.00
Landscape Architect 3	LAR3	\$ 138.00
Landscape Architect 4	LAR4	\$ 165.00
Landscape Architect 5	LAR5	\$ 219.00
Landscape Architect 6	LAR6	\$ 244.00
Planner 1	PLN1	\$ 127.00
Planner 2	PLN2	\$ 144.00
Planner 3	PLN3	\$ 156.00



**DAVID EVANS
AND ASSOCIATES INC.**

Hourly Rate Schedule

Classification	Labor Billing Code	Hourly Rate
Planner 4	PLN4	\$ 193.00
Planner 5	PLN5	\$ 219.00
Planner 6	PLN6	\$ 255.00
Project Accountant 3	PAC3	\$ 116.00
Project Accountant 4	PAC4	\$ 152.00
Project Coordinator 1	PJC1	\$ 94.00
Project Coordinator 2	PJC2	\$ 104.00
Project Coordinator 3	PJC3	\$ 112.00
Project Coordinator 4	PJC4	\$ 127.00
Project Coordinator 5	PJC5	\$ 150.00
Project Manager 1	PJM1	\$ 161.00
Project Manager 2	PJM2	\$ 191.00
Project Manager 3	PJM3	\$ 209.00
Project Manager 4	PJM4	\$ 219.00
Project Manager 5	PJM5	\$ 240.00
Project Manager 6	PJM6	\$ 260.00
Project Manager 7	PJM7	\$ 282.00
Scientist 1	SCI1	\$ 114.00
Scientist 2	SCI2	\$ 133.00
Scientist 3	SCI3	\$ 140.00
Scientist 4	SCI4	\$ 160.00
Scientist 5	SCI5	\$ 174.00
Scientist 6	SCI6	\$ 187.00
Structural Engineer 1	STE1	\$ 125.00
Structural Engineer 2	STE2	\$ 146.00
Structural Engineer 3	STE3	\$ 161.00
Structural Engineer 4	STE4	\$ 186.00
Structural Engineer 5	STE5	\$ 203.00
Structural Engineer 6	STE6	\$ 229.00
Senior Project Surveyor	SPSV	\$ 210.00
Survey Analyst 1	SAN1	\$ 119.00
Survey Analyst 2	SAN2	\$ 135.00
Survey Analyst 3	SAN3	\$ 148.00
Survey Analyst 4	SAN4	\$ 161.00
Survey Analyst 5	SAN5	\$ 177.00



**DAVID EVANS
AND ASSOCIATES INC.**

Hourly Rate Schedule

Classification	Labor Billing Code	Hourly Rate
Survey Party Chief 1	PCH1	\$ 104.00
Survey Party Chief 2	PCH2	\$ 116.00
Survey Party Chief 3	PCH3	\$ 130.00
Survey Party Chief 4	PCH4	\$ 138.00
Survey Party Chief 5	PCH5	\$ 151.00
Survey Supervisor	SSPV	\$ 270.00
Survey Technician 1	SVT1	\$ 104.00
Survey Technician 2	SVT2	\$ 120.00
Survey Technician 3	SVT3	\$ 128.00
Survey Technician 4	SVT4	\$ 137.00
Survey Technician 5	SVT5	\$ 161.00
Survey Technician 6	SVT6	\$ 172.00
Surveyor 1	SVY1	\$ 146.00
Surveyor 2	SVY2	\$ 161.00
Surveyor 3	SVY3	\$ 177.00
Surveyor 4	SVY4	\$ 192.00
Surveyor 5	SVY5	\$ 213.00
Traffic Engineer 1	TEN1	\$ 135.00
Traffic Engineer 2	TEN2	\$ 151.00
Traffic Engineer 3	TEN3	\$ 177.00
Traffic Engineer 4	TEN4	\$ 197.00
Traffic Engineer 5	TEN5	\$ 224.00
Traffic Engineer 6	TEN6	\$ 237.00
Traffic Engineer 7	TEN7	\$ 252.00

Expenses & Outside Services

Mileage	applicable current IRS
Outside Services/Subconsultant	Bill at cost with no markup
Internal Expenses	Bill at cost with no markup