

**CITY OF LAFAYETTE
PERSONAL SERVICES CONTRACT**

A CONTRACT between THE CITY OF LAFAYETTE ("City"), and WALTER J. "SKIP" WENDOLOWSKI ("Consultant").

1. **Term**

The term of this contract shall be from November 1, 1996 until June 30, 1997, unless sooner terminated under the provisions of this contract.

2. **Consultant's Service**

Consultant will advise and provide analysis on all land-use related matters, including, but not limited to: land use applications, attendance at public land use hearings before the City's Planning Commission and City Council and other bodies, preparation of all necessary staff reports, assisting the City Manager with any updating as a result of the City's the Comprehensive Plan Review, meeting with the City Administrator, City Engineer and City Attorney concerning the above as well as performing such other tasks as are deemed appropriate by the City's Project Manager.

3. **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.

4. **Compensation**

City agrees to pay Consultant for the services set out above at the all-inclusive rate of \$40.00 per hour. Contractor may avail himself of City supplies such as paper for the preparation of any reports analysis or other documents deemed necessary as the City's Project Manager may allow.

5. **Project Managers**

City's Project Manager is Mark Gervasi, City Administrator. Consultant's Project Manager is Walter J. "Skip" Wendolowski.

6. **Project Information**

Consultant agrees to share all project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the

project. No information, news, or press releases related to the project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of City's Project Manager.

7. Duty to Inform

Consultant shall give prompt written notice to City's Project Manager 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 nonconformity 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.

8. Consultant is 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.

9. Overtime

Any person employed on work under this contract, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 U.S.C. §201 to §209, shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week.

10. Indemnity and Insurance

a. Indemnity:

Consultant acknowledges responsibility for any and all 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 acts, omissions, activities, or services in the course of performing this contract.

b. Liability Insurance:

Consultant shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Consultant, the City, its Councillors, officers, agents, and employees. 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.

c. Workers' Compensation Coverage:

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. Consultant shall provide to City within ten (10) days after contract award a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the consultant is self-insured.

d. Professional Errors and Omissions:

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.

e. Certificates:

Consultant shall furnish the City certificates evidencing the date, amount, and type of insurance required by this contract. All policies will provide for not less than thirty (30) days' written notice to the City before they may be canceled.

f. Primary Coverage:

The coverage provided by insurance required under this contract shall be primary, and any other insurance carried by City shall be excess.

11. Work is Property of City

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Consultant under this contract shall be the property of City.

12. Law of Oregon

The contract shall be governed by the laws of the State of Oregon. Venue shall be in Yamhill County, Oregon.

13. Successors and Assignments

- a. Each party binds itself, and any partner, successor, executor, administrator, or assign to this agreement.
- b. Neither the City nor the Consultant shall assign, or transfer their interest or obligation hereunder in this agreement without the written consent of the others. Consultant must seek and obtain the City's written consent before subcontracting any part of the work required of Consultant under this contract. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

14. Records

Consultant shall retain all books, documents, papers, and records that are directly pertinent to this contract for at least three years after the City makes final payment on this contract and all other pending matters are closed.

Consultant shall allow the City, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

15. Breach of Contract

Consultant shall remedy any breach of this contract within the shortest reasonable time after Consultant first has actual notice of the breach or the City notifies Consultant of the breach, whichever is earlier. If Consultant fails to remedy a breach in accordance with this paragraph, the City may terminate that part of the contract affected by the breach upon written notice to Consultant, may obtain substitute services in reasonable manner, and may recover from Consultant the amount by which the price for those substitute services exceeds the price for the same services under this contract.

If the breach is material and Consultant fails to remedy the breach in accordance with this paragraph, the City may declare consultant in default and pursue any remedy available for a default.

Pending a decision to terminate all or part of this contract, the City unilaterally may order Consultant to suspend all or part of the services under this contract. If the City terminates all or part of the contract pursuant to this paragraph, Consultant shall be entitled to

compensation only for services rendered prior to the date of termination, but not for any services rendered after the City ordered suspension of those services. If the City suspends certain services under this contract and later orders Consultant to resume those services, Consultant shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

To recover amounts due under this paragraph, the City may withhold from any amounts owed by the City to Consultant, including but not limited to amounts owed under this or any other contract between Consultant and the City.

16. Termination for Convenience

The City may terminate all or part of this contract at any time for its own convenience by written notice to Consultant. Upon termination under this paragraph, Consultant shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier, plus Consultant's reasonable costs actually incurred in closing out the contract.

17. Intellectual Property

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this contract shall vest in the City. Consultant shall execute any assignment or other documents necessary to effect this paragraph. Consultant may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Consultant shall transfer to the City any data or other tangible property generated by Consultant under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

18. Payment for Labor or Material

Consultant shall make payment promptly, as due, to all persons supplying to Consultant labor or material for the prosecution of the work provided for in this contract.

19. Contributions to the Industrial Accident Fund

Consultant shall pay, if applicable, 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.

20. Income Tax Withholding

Consultant shall pay to the Oregon Department of Revenue all sums withheld from Consultant's employees pursuant to ORS 316.167.

21. Payment of Claims by the City

If Consultant fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Consultant or a subcontractor by any person in connection with this contract as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Consultant pursuant to this contract. The City's payment of a claim under this Paragraph shall not relieve Consultant or consultant's surety, if any, from responsibility for those claims.

22. Workers Compensation

If Consultant is a subject employer, Consultant covenants that it will comply with ORS 656.017. Consultant shall indemnify the City for any liability incurred by the City as a result of Consultant's breach of the warranty under this Paragraph.

23. Medical Care for Employees

Consultant shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums which consultant agrees to pay for such services and all moneys and sums which Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

24. Modification

Any modification of the provisions of this contract shall be reduced to writing and signed by the parties.

25. No Waiver of Legal Rights

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

26. Integration

This contract contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

CONSULTANT

THE CITY OF LAFAYETTE

Walter J. Wendolowski
Walter J. Wendolowski

Mark Gervasi
Mark Gervasi
City Administrator

Address: COMMUNITY PLANNING SERVICES
835 MADRONA AVE S.
SALEM, OR 97302

Telephone: (503) 589-9284

pcc/acm/56052/planning.psa(11/21/96)

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PLEASE REPLY TO PORTLAND OFFICE

November 21, 1996

CLACKAMAS COUNTY OFFICE
181 N. Grant, Suite 202
Canby, Oregon 97013
TELEPHONE: (503) 266-1149

VANCOUVER, WASHINGTON OFFICE
First Independent Place
1220 Main Street, Suite 451
Vancouver, Washington 98660-2964
TELEPHONE: (360) 699-7287
FAX: (360) 699-7221

JAMES M. COLEMAN
SUSAN J. WIDDER
SPECIAL COUNSEL

- * ALSO ADMITTED TO PRACTICE IN WASHINGTON
** ALSO ADMITTED TO PRACTICE IN CALIFORNIA
.. ALSO ADMITTED TO PRACTICE IN WASHINGTON AND MONTANA

Mr. Mark Gervasi
City Administrator
City of Lafayette
P.O. Box 55
Lafayette, OR. 97127

RE: Personal Services Contract -- Skip Wendolowski

Dear Mark:

Enclosed as requested is a hard copy of the above document. Please review its terms to ensure that I made the changes we discussed and that it meets with your satisfaction. Then pass it on to Skip for his review and comment. Should he have any questions about its terms, have him call me.

I put a call into Steve Moskowitz about the Dayton/ Lafayette IGA amendment; he has not called me back. The amendment itself looks fine to me.

If you have any questions, please feel free to contact me at your earliest convenience.

Sincerely yours,

Paul C. Elsner

Enclosure

pcc/nem/56052/planning.lt1

PROFESSIONAL BACKGROUND

**Walter J. Wendolowski, AICP
Principal Planner**

Mid-Willamette Valley Council of Governments

This position embraced a wide range of responsibilities involving long range and current planning as well as supervision of research staff and interns. Completed assignments include managing a wellhead protection project which created a procedural framework addressing protection measures for community well systems; and, crafting new land use codes for the Cities of Keizer and Donald. Additional long range activities include organizing and managing Periodic Review Work Programs. The position was also responsible for current planning in six small cities in Marion and Yamhill Counties, effectively managing all aspects of each community's current land use program.

City of Keizer

Achieved distinction as the first full-time planner employed by the City of Keizer, with primary responsibility for managing current planning activities. This position required the establishment of new a planning administration system; from meeting customer information requests to receiving applications and issuing staff reports. In addition to current planning activities, the position is responsible for a variety of short-range planning projects, including the organization of a geographic information system and participation on regional transportation and housing committees.

Marion County

As staff planner for Marion County was primarily responsible for providing planning services to the Cities of Keizer, Stayton and Silverton. This involved assisting citizens with land use information, preparing staff reports for a full range of land use activities and presenting the material before a Hearings Officer, Planning Commission or City Council. Additional duties included preparation of staff reports for a variety of County land use actions and coordinating local land use issues with State agencies.

Coos County

While at Coos County developed long-range planning projects for the Planning Department. Specific projects included urban growth boundary adjustments, zone changes, revisions to floodplain regulations and exception findings for rural housing and reservoir development on resource lands. Additional duties included preparation of staff reports for a variety of County land use actions and administering land use activities in the Coos Bay Estuary and Coquille River Estuary Management Plans.

Private Consulting

Private consulting activities included constructing new zoning ordinances for the Cities of Idanha and Detroit as well as completing numerous staff reviews and reports for the City of Stayton.

PROFESSIONAL ACTIVITIES

Member, American Institute of Certified Planners, and, member of the American Planning Association, national and state chapters.

Logistics Coordinator for the 1992 Salem Convention of the Oregon Chapter - American Planning Association and Program Co-Chair for the 1997 Salem Convention of the Oregon Chapter - American Planning Association.

EDUCATION

Oregon State University - Master of Arts in Interdisciplinary Studies; June, 1987; Major Area: Agricultural and Resource Economics; Minor Areas: Geography and Economics.

University of New Hampshire - Bachelor of Arts in Economics; May, 1975.