



**REQUEST FOR PROPOSAL (RFP)**

**PROFESSIONAL SERVICES  
FOR**

**OWNERS REPRESENTATIVE / PROJECT MANAGER**

**HAPPY VALLEY COMMUNITY RECREATION CENTER**

**JANUARY 2025**

**CITY OF HAPPY VALLEY  
16000 SE MISTY DRIVE  
HAPPY VALLEY, OR 97086**

## **Introduction**

The City of Happy Valley is accepting proposals from qualified firms for owner's representative / project management services to support the future Happy Valley Community Recreation Center (HVCRC). The City purchased 40 acres located at 13E31A Lot 100 to be the future site of the HVCRC. Separately, the City will construct a park surrounding the HVCRC. The HVCRC is envisioned to be approximately 65,000 gsf consisting of amenities such as the following:

- Aquatics
- Double Court Gymnasium
- Indoor Walking & Jogging Track
- Large Community Room & Kitchen
- Reservable Gathering Space
- Weight & Cardio Spaces
- Group Exercise Room

Conceptual layout and renderings based on work during the initial feasibility study can be found at <https://www.happyvalleyor.gov/community-center-feasibility-study-2>

The City has hired Opsis Architecture to complete the design. On a parallel track, the City has hired Pence Contractors as the Construction Manager / General Contractor (CMGC). The role of owners representative / project manager is to support the Project Team and represent the City throughout design and construction.

## **SECTION 1: Proposal Submittal and Key Dates**

**Proposal Submittal:** The proposal must be received by the City of Happy Valley by **5:00pm on February 3, 2025**. Only electronic proposals will be accepted. Proposals must be clear, succinct and **not exceed twenty (20) pages**. Title page, table of contents, cover letter, and Supporting Information section do not count in the overall page count of the proposal. Proposers who submit more than the pages indicated may not have the additional pages of the proposal read or considered.

All submittals will receive receipt of submission via email if received and accepted.

Proposals should be addressed to:

Ben Bryant  
Assistant City Manager  
[benb@happyvalleyor.gov](mailto:benb@happyvalleyor.gov)  
(503) 886-8440

**Key Dates:**

RFP Advertised: 1/16/25

Last Day for Questions to be submitted: 1/23/25

Proposals Due: 2/3/25

Interviews (if necessary): 2/10/25 or 2/11/25

Notice of Intent to Award: Late February

**SECTION 2: Inquiries, Protest Procedures, and Confidentiality**

Requests for clarification about the RFP or protests to the RFP must be submitted in writing no later than ten (10) days prior to the date proposals are due. Protests of the solicitation or any addendum must comply with OAR 137-047-0730 and must be addressed to the Project Manager listed above. As appropriate, questions and answers will be provided to all the RFP recipients and may take the form of an addendum to the RFP. Notification of addenda will be posted on the Happy Valley Bids and Proposal advertisement webpage. Solicitation Documents are available for review on the City's Bids and Proposal webpage and at City Hall.

If a proposer believes any element of this RFP is inconsistent with applicable law, the proposer may file a solicitation protest in writing no later than ten (10) days prior to the date proposals are due. Solicitation protests must comply with OAR 137-047-0730.

Contractors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

**CONFIDENTIALITY STATEMENT**

The City of Happy Valley abides by the public records laws of the State of Oregon. As such, proposal documents are generally considered to be a matter of public record after the contract for work has been awarded. Information in a proposal may or may not be considered to be exempt from public disclosure based on the following:

- Trade secrets as identified in ORS 192.345(2);
- Information submitted in confidence as identified in ORS 192.355(2).

To the extent of the law, the City will endeavor to keep information confidential if the proposer marks the subject information as confidential. If a proposal contains any information that the Proposer believes is exempt from disclosure under the various grounds specified in the Oregon Public Records Law, the Proposer must clearly designate each such portion of its proposal as exempt at the time of proposal submission, along with a justification and citation to the legal authority relied upon. Identifying the proposal, in whole, as exempt from disclosure is not acceptable. Failure to identify specific portions of the proposal as exempt shall be deemed a waiver of any future claim of that information as exempt.

The City will make available to any person requesting information, through the City processes for disclosure of public records, any and all information submitted as a result of this RFP not exempted from disclosure without obtaining permission from any Proposer to do so. City may also, in its sole discretion, elect to publish all such information at any time, regardless of whether or not a public records request has been received. However, if a public records request is made for material marked by the Proposer as exempt, the City will attempt to notify the impacted Proposer prior to any release of the material. Application of the Oregon Public Records Law by the City will determine whether any information is actually exempt from disclosure. The City accepts no liability for the release of any information submitted.

### **SECTION 3: Project Goals and Scope of Work**

**1. Provide Community Benefit**

For decades, residents of Happy Valley have expressed interest in a new community recreation center. Happy Valley is a diverse community of families. Parents and caregivers are looking for more opportunities for their kids to participate in recreation programs and aquatics. Likewise, senior citizens are looking for ways to stay active. The vision for the new community recreation center is to provide something for everyone. First and foremost, the community is looking for an aquatic facility. Initial input has indicated a slight preference for more recreational aquatics, though the City is still interested in exploring options to also include a competition pool. Other amenities are intended to provide a place for recreation, events, etc.

**2. Integrate Community Recreation Center with Future City Park**

The City has purchased 40.11 acres of land for the community recreation center. It's envisioned that a future City Park, similar to Happy Valley Park, will surround the center. Both the community recreation center and the park will be designed concurrently so they complement each other and flow together. Although designed at the same time, the park may be constructed in a future phase, depending on project costs.

**3. Coordinate with City and Utility Providers on Development of Scouters Mountain Road Extension and Future Downtown**

The community recreation center will be the east anchor of the future downtown Happy Valley. Over the course of the last several years, the City has purchased most of the land necessary for a future downtown and the road infrastructure to serve the area. Construction of the community recreation center will require careful coordination with the City on the extension of Scouters Mountain Road, which will serve as the future main street for the downtown and be the main access point for the center. The entire project team will need to coordinate with the various utility providers. Most significantly, Water Environment Services (WES) is expected to be expanding sewer capacity in Rock Creek at the same time to serve this area.

#### 4. Integrated Team Effort

The project's unique technical complexities are best addressed by a fully-integrated team approach wherein the owner's representative / project manager supports the City and works with the architects, engineers, other design professionals, and the CMGC to address challenges during the pre-construction and construction phase. Timely and engaged collaboration will be expected throughout the project. The owner's representative / project manager will review and provide input on constructability, evaluation of building systems, material procurement, and on-going costing. Bi-weekly meetings will occur throughout the pre-construction phase and weekly, if not daily, interaction is anticipated during construction. The City is working with Opsis Architecture, Harper Houf Peterson Righellis, and many other consultants to develop the design and prepare construction documents. The City has also contracted with Pence Contracting for CMGC services.

### **SECTION 4: Scope of Services**

Design has already begun, and Substantial Completion of the Community Recreation Center is estimated to be Summer 2027. The City is seeking support from an Owners Representative throughout the rest of the Design and through Construction Close Out. Specifically, duties include, but are not limited to the following:

#### *General Considerations*

- Commit to the Project Charter attached as Exhibit C.
- Be a part of the Project Team and help promote and foster collaboration amongst the team in order to achieve the project goals as stated in the Project Charter.
- Act as key liaison between the City and the Project Team for all matters related to the Project involving the City's architectural consultant, the contractor and other consultants and vendors.
- Attend/organize/conduct meetings with City staff, the City's consultants, City Council and members of the public, as necessary.
- Provide regular written and verbal project updates to staff, City Council and others.
- Work collaboratively with the Project Team to manage the project budget and schedule, including a monthly project budget and schedule report.
- Maintain records in an orderly manner including: Correspondences, Contract Documents, Change Orders, Construction Change Directives, the Architect's Supplemental Instructions, construction change logs, supplementary drawings, requests for payment, and other important project documentation.
- Perform all other tasks, or provide advice and assistance, reasonably related to the services noted below.

*Design (Now – December 2025)*

- Organize weekly progress meetings for team coordination and to provide updates to the City.
- Perform regular review of design progress, including reviews at design milestones.
- Focus on budget conformance, schedule conformance, constructability, building performance, O&M performance.
- Report findings and recommendations.
- Analyze cost estimates at key project milestones (for example: 90% of DD and 75% of CD) with the City and project team; identify strategies for aligning costs with the budget and develop a detailed Value Engineering log. Reconcile as needed to keep the project on track.
- Advise the City on the potential for achieving any sustainability benchmarks, advise on associated costs, and identify any available incentives.
- Identify decision points, changes, and tradeoffs related to sustainability.
- Work collaboratively with the project team to monitor progress against schedule and identify opportunities to improve.
- Coordinate and advise the City with evaluation of bids, in coordination with the architectural firm and contractor.
- Support the City and the Project Team in obtaining all necessary permits, including attending meetings with City staff to prepare for submissions and review issues.
- Support the City and the Project Team with any land use applications.

*Construction (Approximately Spring 2026 – Summer 2027 with potential for early grading in Summer 2025)*

- Track the construction progress, including on-site inspections to support and confirm the architectural consultant's construction observation, and report on construction schedule, including alerting team of potential opportunities for delay.
- Oversee construction activities on behalf of the City, including regular (not less than weekly) Construction Coordination Meetings throughout the construction and post-construction stages.
- Work collaboratively with the contractor to facilitate the flow of information. Review and approve the contractor's invoices and advise City on contract modifications.
- Manage the City's subcontractors and vendors as necessary to provide on time delivery for Owner supplied products and/or services. Certify nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(2)
- Review Architect's responses to Contractor requests for interpretations (RFI's) of drawings and specifications and coordinate the resolution of questions that may arise.
- Analyze all RFI's and provide written recommendations to both the Architect and City for consideration.
- Advise the City on the work of Special Consultants and testing, review results of tests required by the contract documents and invoices for third-party consultants to be paid by the City.

- Develop a plan with the Project Team for managing construction contingency and completing project within available budget.
- Develop and review additional solicitations and provide overall construction administration.
- Recommend necessary or desirable change orders to City and architectural consultant, and if accepted, facilitate changes as necessary.
- Analyze all submittals for consistency with design plans. Review with Architect and City as needed.
- Track, review and analyze change orders and support the City with negotiations.
- Work with City to obtain consultants and goods and service providers for furniture, fixtures, and equipment.
- Monitor labor compliance documentation.
- Verify contractor safety programs are followed.
- Coordination with utility providers
- Construction quality monitoring including but not limited to daily inspection and report writing and coordination of special inspections as needed.

*Post Construction (Fall 2027)*

- Verify receipt of closeout documents, As-Builts and O&M Manuals.
- Develop and monitor commissioning of the project as required.
- Final payment review and recommendation.
- Commissioning assistance as needed.
- Coordinate efforts between staff and consultants during the close-out period to reach acceptance by the City.
- Coordinate final certificate of occupancy, final inspections, and punch-list preparation, as necessary.
- Manage a warranty review 12 and 24 months after completion of construction.
- Work collaboratively with the Project Team to coordinate warranty resolutions and other potential contractor issues.

The selected Contractor must meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

## **SECTION 5: Request for Proposal**

Information that is required from the applicant as part of the proposal shall include:

### **1. Transmittal Letter**

The Transmittal Letter must include the following:

- Full legal name of proposing business entity
- Name(s) of the person(s) authorized to represent the proposer in any negotiations
- Name(s) of the person(s) authorized to sign any contract that may result and a

statement that the Proposal will be valid for 90 days.

- Contact person's name, mailing or street addresses, phone numbers and email address. 1-page limit.

**2. Project Team**

Overall team description and organizational structure. 2-page limit.

Note: Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120.

**3. Project approach**

The approach shall include the team's statement of understanding of the project intent and requirements and shall describe the proposer's approach to accomplishing the goals and deliverables of the project, tasks and issues presented in completing the Work, and how the Proposer would resolve any major identified issues. The ideal Proposer will bring experience working with public projects in a collaborative manner, especially similar community buildings. 2-page limit.

**4. Statement of Work and products to be delivered**

A clear written statement of the services to be performed, the form they will take and what the final products or deliverables will be. A concise outline delineating the specific tasks to be performed, indicating what will be done, in what sequence and by whom should be provided, including tasks to be performed by City and its service providers. 3-page limit.

**5. Qualifications and Experience**

Include firm information and resumes on each key person involved in the project with verifiable references as well as a description of the respondent's organizational framework, specific resources, and any other information to demonstrate that the respondent can effectively and efficiently provide the requested project. Include contact information for each firm's Project Manager. 6-page limit.

Include examples of similar community buildings. Prior similar project experience within the last ten years will be considered, if completed with members of the proposed team. Resumes and past work examples may be included separately as part of the Supporting Information (see Line 7, below).

**6. Cost proposal**

Provide cost proposal and/or fee schedule. 1-page limit.

**7. Supporting Information:**

Resumes, references, brochures, No page limit.



## **SECTION 6: Evaluation**

Proposals shall be submitted prior to the time fixed in the advertisement for proposals, including time/date stamp of a received e-mail. Proposals received after the time so designated will be considered late proposals and will be rejected/returned unopened. No responsibility will be attached to any official of the City for the premature opening of, or the failure to open, a proposal not properly addressed and identified.

The applicant's proposal and capabilities will be judged according to the following criteria:

1. Project approach and Statement of Work (25 pts)  
The proposal will be evaluated to assess the approach to accomplish the goals and scope of services. This statement of approach must clearly outline how the work will be completed collaboratively, tasks and issues presented in completing the work, and how the proposer would resolve any major identified issues.
2. Individual capabilities and experience with similar projects (25 pts)  
The proposal will be evaluated based on the experience and skills of the applicant and/or staff as they relate to this project, capacity to perform required tasks and knowledge and experience with similar projects.
3. Management Plan and Teamwork Approach (25 pts)  
The proposal will be evaluated based on the respondent's plan for providing the desired management services for the project. In addition, the proposed approach to working collaboratively with the Project Team.
4. Cost proposal (25 pts)  
The proposal will be evaluated based upon the proposed cost.

In the award of the contract, the City of Happy Valley will consider the element of time, will accept the proposal or proposals which in their estimation will best serve the interests of the City, and will reserve the right to award the contract to the contractor whose proposal shall be best for the public good. The City reserves the right to accept or reject any or all proposals. Without limiting the generality of the foregoing, any proposal which is incomplete may be rejected. Only one proposal will be accepted from any one firm or association. Any evidence of collusion between proposers may constitute a cause for rejection of any proposals so affected.

The City, pursuant to ORS 279A.120, for the purposes of awarding the contract, shall add a percent increase on the proposal of a non-resident proposer equal to the percent, if any, of the preference given to that proposer in the state in which the proposer resides. "Resident proposer" means a proposer that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the proposal, has a business address in this state and has stated in the proposal whether the proposer is a "resident proposer".

After ranking of proposals, the review panel may choose to interview the top-ranked teams. Upon completion of interviews, the teams will again be ranked utilizing the same criteria with the additional details provided by the applicant in the interviews.

The review panel may consist of the following individuals:

- Ben Bryant, Assistant City Manager
- Chris Randall, Public Works Director
- Mark Ennis, Building Official
- Representative(s) from Opsi Architecture
- Representative(s) from Pence Contracting

The City may cancel the procurement or reject any or all proposals in accordance with ORS 279B.100.

The notice of intent to award of the contract by the City shall constitute a final decision of the City's intent to award the contract if no written protest of the award is filed with the Project Manager within seven calendar days of the notice of intent to award. If a protest is timely filed, the award is a final decision of the City's intent to award only upon issuance of a written decision denying the protest and affirming the award. The award and any written decision denying protest shall be sent to every proposer who provided an address.

Right to Protest: Protest of the contract award must be submitted within seven (7) days of the date the city awards the contract or issues a notice of intent to award the contract, whichever occurs first. A protest of the contract award must be in writing, be addressed to the Project Manager listed above and comply with OAR 137-047-0740. In order to be an adversely affected or aggrieved proposer with a right to submit a written protest, a proposer must be next in line for award, i.e. the protester must claim that all higher rated proposers are ineligible for award because they are non-responsive or non-responsible. The City of Happy Valley will not entertain protests submitted after the time period established in this rule. If the City upholds a protest, in whole or in part, the City may in its sole discretion either award the contract to the successful protestor or cancel the solicitation.

## **SECTION 7: Contract Terms and Conditions**

### **1. City Contract**

Proposers are advised to thoroughly review and familiarize themselves with the draft personal/professional services agreement (Attachment B).

The successful applicant will also be required to have a City business license. Details and application are available at [Business Licenses | City of Happy Valley \(happyvalleyor.gov\)](https://www.happyvalleyor.gov/business-licenses).

Requirements applicable to contractors on all public contracts, including the contract that will be awarded under this solicitation, are attached as Attachment A.

**2. Insurance**

Proposers are advised to carefully review the insurance requirements contained in the sample standard contract.

**ATTACHMENT A**

**Statutorily Required Public Contracting Provisions**

Contractor shall observe all applicable state and local laws pertaining to public contracts. Pursuant to ORS Chapters 279A, 279B and 279C, which require every public contract to contain certain provisions, and other state law, the following provisions shall be a part of this contract, as applicable. All defined terms in this Attachment shall be interpreted in accordance with Solicitation or Contract Document and the relevant statutory provision.

1. ORS 279A.110 (Non-discrimination Certification): Contractor shall certify that Contractor has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a disadvantaged, minority owned, woman owned, veteran owned, or emerging small business enterprise (certified under ORS 200.055.), or a business that is owned or controlled by, or employs a disabled veteran (as defined in ORS 408.225).
2. Pursuant to ORS 279B.220 or 279C.505, as applicable, Contractor shall make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract; shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
3. Pursuant to ORS 279B.225, every public contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.
4. Pursuant to ORS 279B.230(1) or 279C.530(1), as applicable, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor 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.
5. Pursuant to ORS 279B.230(2) or 279C.530.(2), as applicable, in every public contract, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
6. Pursuant to ORS 279B.235(1) and 279B.020 and ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Contractor shall not employ and shall require

that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:

- i. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
  - ii. For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
  - iii. For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).
  - iv. The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.
  - v. Contractor shall and shall require its Subcontractors to give notice in writing to their employees who work under this Contract, either at the time of hire or before commencement of Work on the Contract, 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.
7. Environmental Laws. Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
  8. Oregon Tax Law Compliance: Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the date of this Contract, represents and warrants that it has faithfully has complied with, and will continue to comply with during the term of this Contract: (A) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Failure to comply with this section is a default for which the City may terminate the Contract and seek damages and other relief available under the terms of the Contract or under applicable law.
  9. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the state of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the

Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform these services in the state of Oregon prior to entering into this Contract.

10. Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

**ATTACHMENT B**  
**PROFESSIONAL SERVICES AGREEMENT**

**Happy Valley Community Recreation Center – Owner’s Representative Services**

This Agreement is entered into between the City of Happy Valley, a municipal corporation of the State of Oregon (“City”), and [Consultant Legal Name, Entity Type and Location] (“Consultant”). This Agreement is made effective as of December 31, 2024 (the “Effective Date”). This Agreement may refer to the City and Consultant individually as “Party” or jointly as “Parties.”

**RECITALS**

WHEREAS, the City requires the services of an Oregon certified professional to provide design services for the Happy Valley Community Recreation Center project, including preparation of schematic design, design development, and construction documents and other supplemental services for the project (the “Services”); and

WHEREAS, Consultant submitted a proposal for the Services dated October 11, 2024 (the “Proposal”); and

WHEREAS, the City desires to contract with the Consultant to provide the Services.

**AGREEMENT**

NOW THEREFORE, in consideration of the foregoing Recitals incorporated by this reference and the mutual promises contained in this Agreement, City and Consultant agree as follows:

**1. Term**

The term of this Agreement shall be from the Effective Date until not later than [END DATE] unless amended or sooner terminated under the provisions of this Agreement. Passage of the Agreement’s term shall not extinguish, prejudice, or limit either party’s right to enforce this Agreement with respect to any default or defect in performance that has not been corrected.

**2. Consultant’s Services**

The Consultant’s Services and schedule for performance are set forth in Exhibit A. Any conflict between this Agreement and Consultant’s Proposal shall be resolved first in favor of this Agreement. Consultant will use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the Services. Consultant’s failure to adhere to the work schedule in Exhibit A is sufficient grounds for the City to terminate this Agreement.

**3. Consultant’s 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**

Consultant’s fee for completion of all Services will not exceed [AMOUNT]. Upon completion of any tasks, milestones or other deliverables described in Exhibit A, City agrees to pay Consultant at the times and in the amount(s) set forth in this Agreement and in accordance with Exhibit B.

Consultant shall submit monthly requests for payment to the City for work performed under this Agreement, and the invoices shall describe the work performed, by whom it was performed, and itemize and explain all expenses for which reimbursement is being claimed. Mileage will be

reimbursed for only one vehicle and only at the current in effect IRS rate. Meals will be at the current in effect U.S. General Services Administration (GSA) per diem rate, and hotels and parking will be paid at actual amounts, not to exceed the GSA daily rate. No reimbursement will be made for any alcohol purchases or parking or traffic citations.

Consultant must promptly pay all sums due to subconsultants for services and reimbursable expenses after receiving payment for those services from City.

### 5. Project Managers and Notice

The Parties designate the following individuals as their Project Manager, who are designated to send and receive any notices required under this Agreement.

#### City's Project Manager

[Name of Project Manager]  
[Address of Project Manager]  
[Address of Project Manager]  
e:[Email of Project Manager]  
p:[Phone of Project Manager]

#### Consultant's Project Manager

[Name of Project Manager]  
[Address of Project Manager]  
[Address of Project Manager]  
e:[Email of Project Manager]  
p:[Phone of Project Manager]

Each Party shall give the other written notice of any intended change of their Project Manager. Any change to Consultant's Project Manager must be approved by the City, such approval not to be unreasonably withheld.

[The Parties agree that City relied on Consultant's provision of its project manager as a material inducement to enter into this Agreement. The Parties further agree that Consultant's change in project manager mid project include various project inefficiencies that will cause damages to City but that are difficult to be determined. Therefore, Consultant agrees to pay City, as a liquidated damage, [\$\$\$] for any such change.]

All notices shall be made in writing and may be given by **personal delivery, first class mail or email**. Mailed notices shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery.

### 6. Project Information

Consultant agrees to share all information related to the Services and to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the Services. Consultant shall not provide any information, news, or press releases related to the Services 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 Agreement, Consultant becomes aware of actual or potential problems, faults or defects in the Services, any nonconformity with the Agreement, or with any federal, state, or local law, rule or regulation, or if Consultant 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 Agreement. Consultant hereby expressly acknowledges and agrees that as an independent contractor, Consultant is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgment by Consultant shall not affect Consultant's independent ability (or the ability of Consultant's insurer) to assert that the monetary limitations found at ORS 30.272, the immunities listed at ORS 30.265 or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS30.300).

### **9. Consultant Representations and Warranties**

i. Consultant has the power and authority to enter into and perform this Agreement, and when executed and delivered this Agreement shall be a valid and binding obligation of Consultant enforceable in accordance with its terms.

ii. Consultant is engaged as an independent contractor and will be responsible for any federal, state or local taxes applicable to any payments made under this Agreement.

iii. Consultant is not eligible for any federal social security, unemployment insurance, pension, PERS or workers' compensation benefits from compensation or payments paid to Consultant under this Agreement.

iv. Consultant is not an employee of the City, any special district, local government, the federal government or the State of Oregon.

v. Consultant has complied and will continue to comply with all Oregon laws applicable to the performance of Consultant's obligations under this Agreement.

vi. Consultant shall be qualified, professionally competent and duly licensed to perform the work and services at all times during the term of this Agreement.

vii. Consultant has the skill and knowledge possessed by well-informed members of its industry, trade or profession and will apply that skill and knowledge with care and diligence to perform the Services under this Agreement in a professional manner and in accordance with standards prevalent in the Consultant's industry, trade or profession under similar conditions and circumstances.

viii. Consultant has read, understands and agrees to be bound by each of the terms and conditions of this Agreement.

ix. Consultant prepared its Proposal for these Services independently from all other proposers, and without collusion, fraud or other dishonesty.

x. Any Goods / Items / Equipment / Components / Hardware / Software / Intellectual Property Rights, etc. delivered to or granted to the City under this Agreement, and Consultant's Services rendered in the performance of Consultant's obligations under this Agreement, are provided to the City free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and are free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

xi. Upon City's request, Consultant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties. The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations and warranties that Consultant provides.

## **10. Indemnity**

i. Unless otherwise limited by ORS 30.140, Consultant shall indemnify and hold the City, its officers, agents, volunteers, and employees harmless from and against any and all claims, actions, proceedings, judgments, losses, injuries, damages, costs, expenses, and liabilities, including court costs and attorney’s fees, arising out of, or resulting directly or indirectly from, the professional negligent acts, errors or omissions of Consultant or its subcontractors, sub-consultants, suppliers, agents or employees in performance of professional services under this Agreement. Where limited by ORS 30.140, Consultant’s duty to defend the City against a claim for professional negligence and relating to the professional services provided by Consultant shall not arise until the Consultant’s liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and such obligation shall not exceed the proportionate fault of the Consultant.

ii. The Consultant shall indemnify, defend, and hold the City, its officers, agents, volunteers, and employees harmless from and against any and all claims, actions, proceedings, judgments, losses, injuries, damages, costs, expenses, and liabilities, including court costs and attorney’s fees, to the extent they arise out of, or result directly or indirectly from, all other negligent acts or omissions of the Consultant, or any of its subcontractors, subconsultants, suppliers, agents or employees arising in connection with the performance of this Agreement that are not otherwise identified in Subsection (a) of this Section.

iii. The obligations of the indemnifications extended by the Consultant to the City shall survive the termination or expiration of this Agreement.

iv. Except to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Consultant or Consultant’s agents, representatives, subcontractors or subconsultants, the indemnities in subsection (a) and (b) do not require Consultant or Consultant’s surety (if any) or insurer to indemnify the City for damage arising out of the death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the City.

## **11. Insurance**

Consultant and its subconsultants shall provide the following insurance coverages against any claims that may arise from or relate to the performance of the Services. Consultant and subconsultants must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Agreement. The City in no way warrants that the limits stated in this section are sufficient to protect the Consultant from the liabilities that might arise out of the performance of the work under this Agreement by Consultant, its agents, representatives, employees, subcontractors or subconsultants, and Consultant may purchase such additional insurance as they determine necessary.

i. Commercial General Liability Insurance:

- a. The policy must be in an occurrence form and include bodily injury, property damage, broad form contractual liability coverage in the following amounts:

General Aggregate	<b>\$2,000,000</b>
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Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Each Occurrence	\$2,000,000

- b. The policy shall be endorsed to name the City of Happy Valley and its Councilors, officers, agents, and employees as an additional insured with respect to liability for bodily injury, property damage, and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of, the Consultant related to this Agreement.
- c. The endorsement shall be indicated on the Certificate of Insurance, and there shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City as an additional insured.
- d. The Consultant’s insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

ii. Automobile Insurance:

- a. The policy shall cover bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Agreement. Automobile Liability coverage shall be written in an amount not less than \$1,000,000 combined single limit.
- b. The policy shall be endorsed to include the City as an additional insured with respect to liability arising out of the activities performed by, or on behalf of, the Consultant relating to this Agreement.
- c. The City shall be an additional insured to the full limits of liability purchased by the Consultant.

iii. Workers' Compensation Coverage: Consultant certifies that it 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. To the extent permitted by law, a waiver of subrogation in favor of the City shall be included in the policy.

iv. Professional Liability (Errors and Omissions Liability): Consultant shall provide City with evidence of professional errors and omissions liability insurance covering any damages caused by negligent acts, errors, or omissions related to the professional services and

performance of duties and responsibilities under this Agreement, in an amount not less than \$2,000,000 combined single limit per occurrence. Consultant may opt to provide a claims-made policy with a combined single limit per claim of not less than \$2,000,000; but in doing so, Consultant warrants that any retroactive date under the policy precedes the effective date of this Agreement and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two years beginning at the time work under this Agreement is completed. Where any subconsultant provides professional services related to this Agreement, subconsultant must provide equivalent coverage.

- v. Certificates: Consultant shall furnish the City with certificates evidencing the date, amount, and type of insurance required by this Agreement (ACCORD form or equivalent approved by the City). The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All policies will provide for not less than thirty (30) days' written notice to the City before they may be canceled. Such notice will be mailed and emailed to [Project Manager/City Risk Department/? at ADDRESS and EMAIL] All certificates and any required endorsements are to be received and approved by the City before the work commences. Each insurance policy required by this Agreement must be in effect at or prior to the commencement of the work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Agreement.
- vi. Primary Coverage: The coverage provided by insurance required under this Agreement shall be primary and noncontributory, and any other insurance carried by City shall be excess.
- vii. Subconsultants: Consultant shall require the same insurance from its subconsultants. Consultant's certificates shall include all subconsultants as additional insureds under its policies **-OR-** Consultant shall be responsible for ensuring and verifying that all subconsultants have valid and collectible insurance. At any time throughout the life of the Agreement, the City reserves the right to require proof from the Consultant that its subconsultants have insurance coverage. All subconsultants providing services included under this Agreement's Scope of Services are subject to the insurance coverages identified above and must include the City as an additional insured. In certain circumstances, the Consultant may, on behalf of its subconsultants, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Consultant assumes liability for all subconsultants with respect to this Agreement.
- viii. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Oregon and with an "A.M. Best" rating of not less than **A- VI**. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

## 12. Work Product

All work produced by the Consultant is the exclusive property of the City. “Work Product” includes but is not limited to, research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form. The Consultant and the City intend that such Work Product shall be deemed “work made for hire” of which the City shall be deemed the author. If for any reason, a Work Product is deemed not to be a “work made for hire,” the Consultant irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Consultant shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Consultant waives all rights relating to Work Product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Consultant is an architect, the Work Product is the property of the Consultant-Architect, and by executed of this Agreement, the Consultant-Architect grants the City an exclusive an irrevocable license to use that Work Product.

Notwithstanding the above, all pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights of Consultant are and will remain the exclusive property of Consultant.

### **13. Public Records and Confidentiality**

- i. Public Records Requests. Consultant acknowledges that the City is subject to the Oregon Public Records Act and federal law. Third persons may claim that the Confidential Information Consultant submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The City’s commitments to maintain certain information confidential under this Agreement are all subject to the constraints of Oregon and federal laws. All information submitted by Consultant is public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Consultant requests and meets an exemption from disclosure consistent with federal or Oregon law. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.
- ii. Public Records Retention. The City will retain one (1) copy of any public records for the express purposes of complying with State of Oregon public records and archiving laws.
- iii. Confidentiality.
  - a. Consultant’s Confidential Information. During the term of this Agreement, Consultant may disclose to the City certain Consultant Confidential Information pertaining to Consultant’s business. Consultant shall be required to mark Confidential Information CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked, or the Consultant’s Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Consultant shall identify the Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Agreement itself shall not be considered

Confidential Information. Subject to subsection (ii), the City shall: (1) limit disclosure of Consultant Confidential Information to those directors, employees, contractors and agents of the City who need to know the Consultant Confidential Information in connection with the Services and who have been informed of confidentiality obligations at least as strict as those contained in this Agreement, and (2) exercise reasonable care to protect the confidentiality of the Consultant Confidential Information, at least to the same degree of care as the City employs with respect to protecting its own proprietary and confidential information.

- b. City's Confidential Information. Consultant shall treat as confidential any City Confidential Information that has been made known or available to Consultant or that Consultant has received, learned, heard or observed; or to which Consultant has had access. Consultant shall use City Confidential Information exclusively for the City's benefit in the performance of this Agreement. Except as may be expressly authorized in writing by the City, in no event shall Consultant publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Consultant shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, subcontractors, subconsultants and agents of Consultant who need to know the City Confidential Information in connection with the Services and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Agreement, (2) exercise reasonable care to protect the confidentiality of the City Confidential Information, at least to the same degree of care as Consultant employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Consultant's possession or custody or under its control. Consultant is expressly restricted from and shall not use the Intellectual Property Rights of the City without the City's prior written consent.
- c. Retroactivity. This Section shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Consultant and related to this Agreement.
- d. Survival. Consultant's confidentiality obligations under this Agreement shall survive termination or expiration of this Agreement.
- e. Equitable Relief. Consultant acknowledges that unauthorized disclosure of City Confidential Information will result in irreparable harm to the City. In the event of a breach or threatened breach of this Agreement, the City may obtain injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief. The Parties agree that, notwithstanding any other section of this Agreement,

in the event of a breach or a threatened breach of the Agreement's terms related to Confidential Information or Intellectual Property Rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.

- f. **Discovery of Documents.** In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

#### **14. Errors**

Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

#### **15. Changes in Work**

Only the City Manager or City's Project Manager may authorize a change order or extra work. Failure of Consultant to secure written authorization for a change order or extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized change order or extra work, and Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work.

#### **16. Early Termination of Agreement**

- i. The City may terminate this Agreement for convenience at any time for any reason deemed appropriate in its sole discretion. Termination is effective immediately upon notice of termination given by the City.
- ii. Either party may terminate this Agreement in the event of a material breach by the other party that is not cured. Before termination is permitted, the party seeking termination shall give the other party written notice of the breach, its intent to terminate, and **thirty (30)** calendar days to cure the breach. If the breach is not cured within **30** days, the party seeking termination may terminate immediately by giving written notice that the Agreement is terminated.

#### **17. Remedies and Payment on Early Termination**

- i. If the City terminates pursuant to 16(i), the City shall pay the Consultant for work performed in accordance with the Agreement prior to the termination date. No other costs or loss of anticipated profits shall be paid.

- ii. If the City terminates pursuant to 16(ii), the City is entitled all remedies available at law or equity. In addition, Consultant shall pay the City all damages, costs, and sums incurred by the City as a result of the breach.
- iii. If the Consultant justifiably terminates the Agreement pursuant to 16(ii), the Consultant's only remedy is payment for work prior to the termination. No other costs or loss of anticipated profits shall be paid.
- iv. If the City's termination under Section 16(ii) was wrongful, the termination shall be automatically converted to one for convenience, and the Consultant shall be paid as if the Agreement was terminated under Section 16(i).
- v. In the event of early termination, the Consultant's work product before the date of termination becomes property of the City.

### **18. Compliance with Applicable Law**

Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. 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: (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, state and municipal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

Certain Oregon laws apply to all public contracts in Oregon. The City's performance under the Agreement is conditioned upon Consultant's compliance with the applicable provisions in **Attachment A – OR Statutorily Required Contract Provisions**, which are incorporated herein by this reference.

### **19. Records**

Consultant shall retain all books, documents, papers, and records that relate to this Agreement for at least three years after the City makes final payment on this Agreement and all other obligations of Consultant are complete.

Consultant shall permit 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. Access to said documents shall be granted within **seven (7)** days written notice, or such other time as is reasonable under the circumstances.

### **20. Law of Oregon**



This Agreement is governed by the laws of the State of Oregon without reference to its conflict of laws provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this Agreement shall be brought in the appropriate court of Clackamas County, Oregon.

**21. Mediation, Waiver of Trial By Jury, Attorneys' Fees**

- i. Should any dispute arise between the parties to this Agreement 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 Agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation.
- ii. 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 Clackamas County Circuit Court upon the request of either Party.
- iii. Any litigation arising under or as a result of this Agreement shall be tried to the court without a jury.
- iv. In any mediation or litigation arising under this Agreement, each Party shall bear its own fees and costs, including attorney fees.

**22. Conflict of Interest**

Consultant hereby certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Consultant, its employee(s), officer(s) or its director(s) is not a City official/employee or a relative of any City official/employee who: (1) has responsibility in making decisions or ability to influence decision-making on the Agreement or project to which this Agreement pertains; (2) has or will participate in evaluation or management of the Agreement; or (3) has or will have financial benefits in the Agreement. Consultant understands that should it elect to employ any former City official/employee during the term of the Agreement, then that former City official/Consultant employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and any provisions of the City's Charter, Code, ordinances, or administrative rules.

**23. General Provisions**

- i. Successors and Assigns: Each party binds itself, and any partner, successor, executor, administrator or assign to this Agreement.

- ii. Assignment: Consultant shall not assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the City and no assignment shall be of any force or effect whatsoever unless and until the City has so consented. If City agrees to assignment of tasks to a subconsultant, Consultant shall be fully responsible for the acts or omissions of any subconsultants and of all persons employed by them, and neither the approval by City of any subconsultant nor anything contained in this Agreement shall be deemed to create any contractual relation between the subconsultant and City.
- iii. Severability: In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the Parties when they entered into the Agreement.
- iv. No Third-Party Beneficiaries: Consultant and City are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- v. Non-Discrimination: Each party agree not to discriminate on the basis of age, citizenship status, color, familial status, gender identity or expression, marital status, mental disability, national origin, physical disability, race, religion, religious observance, sex, sexual orientation, and source or level of income in the performance of this Agreement.
- vi. Exclusivity: This is not an exclusive contract, and the City retains the right to contract with other entities or contractors for the same or similar goods or services as provided under this Agreement in the City's sole discretion
- vii. Amendments: Any modification of the provisions of this Agreement shall be reduced to writing and signed by the parties. Consultant acknowledges that authority for amendments may be subject to the City's ordinance process.
- viii. Integration: This Agreement and attached Exhibits and Attachments constitutes the entire Agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified in this Agreement regarding this Agreement.
- ix. No Waiver: No waiver, consent, modification, or change of terms of this Agreement 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.
- x. Order of Precedence: Should there be any conflict between the terms of this Agreement and the Consultant's proposed contract terms, scope of work, or any other document provided by

the Consultant, this Agreement shall control and nothing in this Agreement shall be considered as an acceptance of any conflicting terms in the Consultant's Proposal.

- xi. Survival: All provisions in this Agreement, which by their nature should remain in effect beyond termination or expiration of this Agreement, will survive until fulfilled.
- xii. Electronic Signatures: The City and Consultant may conduct this transaction, including any amendments, by electronic means, including the use of electronic signatures.
- xiii. Independent Legal Review: The Parties, by the signature of their authorized representatives, acknowledge that they have read this Agreement, have performed an independent legal review, understand it, and agree to be bound by its terms and conditions.

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**SIGNATURE PAGE**

**IN WITNESS HEREOF**, the Parties hereby cause this Agreement to be executed.

[CONSULTANT]

CITY OF HAPPY VALLEY, OREGON

\_\_\_\_\_  
Authorized Signature Date

\_\_\_\_\_  
City Manager Date

\_\_\_\_\_  
Printed Name and Title





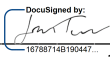
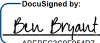








## Happy Valley Team Charter

12-16-24

- Attendees
  - Jason Tuck – City of Happy Valley
  - Ben Bryant – City of Happy Valley
  - Chris Randall – City of Happy Valley
  - Jim Kalvelage – Opsis
  - Erica Dunn – Opsis
  - Gary Blackwell – Opsis
  - Cory Loomis – Pence
  - Franto Sternot – Pence
  - Matt Winkler – Pence
  - Philip Johnson – Pence
  
- Mission – Why are we coming together to build this project:
  - Deliver an authentic and welcoming space that will be a springboard for the health and future of our thriving community.
  
- Project Success – When this project is complete, how will we define success:
  - We will all want to partner again.
  - We have no regrets.
  - We want to use the space ourselves.
  - We delivered a project that was injury and incident free (IIF).
  - We create a space that is at capacity and heavily used/loved by the community.
  - We deliver a space that makes the community proud.
  - The project is the catalyst for the future downtown, spurring rapid development.
  - We maintained the trust of the community and council.
  
- Project Goals – We will obtain this success by achieving the following goals:
  - Maintain a culture of solutions-oriented behavior.
  - Create a space that embraces the ideals of (IIF) for:
    - Construction

- Operation
- Community
- Provide as much price certainty at bond as possible.
- Maintain a team approach to balancing both long and short term costs.
- Deliver the most resilient structure possible for maximum longevity.
- Deliver a facility with low operational and maintenance costs.
- Develop and adhere to an efficient and cost informed schedule.
- Embrace a design that reflects the community of Happy Valley and strengthens civic identity.
- Maintain accountability to the community of Happy Valley.
- Achieve full programming.
- Team Behaviors – How will we work together:
  - Maintain a positive approach to each other and issues that should arise (no jerks).
  - Be respectful of others’ time.
  - Maintain appropriate communications.
    - Not all people need to be in all meetings.
    - Call when a phone call is appropriate and email when email is appropriate.
    - Be specific and to the point.
  - Maintain a solutions-oriented approach. Blame or deflection has no place in a conversation when an issue must be resolved.
  - Debate robustly but maintain unity once a decision is made.
  - Respect other perspectives and obligations to the project.
  - Behave in a fashion where we want to be together.
  - Critique the idea not the person.
  - Hold each other accountable to our goals and commitments held within this document.

- Jason Tuck – City of Happy Valley
- Ben Bryant – City of Happy Valley
- Chris Randall – City of Happy Valley
- Jim Kalvelage – Opsis
- Erica Dunn – Opsis
- Gary Blackwell – Opsis
- Cory Loomis – Pence
- Franto Sternot – Pence
- Matt Winkler – Pence
- Philip Johnson – Pence

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