

RESOLUTION NO. 5178-14

RESOLUTION AUTHORIZING A PERSONAL SERVICES AGREEMENT FOR
CONCEPT PLANNING FOR NEW URBAN AREAS: BASALT CREEK / WEST
RAILROAD

WHEREAS, the City of Tualatin issued a solicitation for request for proposals for
Concept Planning for New Urban Areas: Basalt Creek / West Railroad; and

WHEREAS, the solicitation was advertised in the Daily Journal of Commerce on August
2, 2013, and proposals were received prior to the close of the proposal period on August 30,
2013; and

WHEREAS, City staff and City of Wilsonville staff reviewed the responsive proposals
and recommend the City Council award the contract to Fregonese Associates, with sub-
consultants; CH2M Hill, Leland Consulting Group, and DKS Associates to provide professional
services for the Concept Planning for New Urban Areas: Basalt Creek / West Railroad project;
and

WHEREAS, funds are available for the Concept Planning for New Urban Areas: Basalt
Creek / West Railroad project through a Construction Excise Tax (CET) grant from Metro; and

WHEREAS, the procurement complied with the City's public contracting requirements;
and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
TUALATIN, OREGON, that:

Section 1. The City of Tualatin hereby awards the Professional Services contract for
the Concept Planning for New Urban Areas: Basalt Creek / West Railroad project to Fregonese
Associates.

Section 2. The City Manager is authorized to execute a contract with Fregonese
Associates in the amount of \$302,915.

Section 3. The City Manager is authorized to execute Contract Amendments totaling up
to 10% of the original contract amount.

Section 4. This Resolution is effective upon adoption.

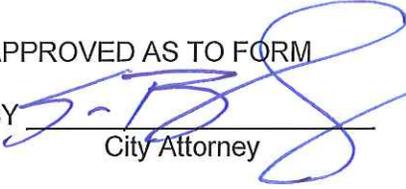
ADOPTED by the City Council this 27th day of January, 2014.

CITY OF TUALATIN, OREGON

BY 

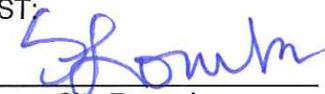
Mayor

APPROVED AS TO FORM

BY 

City Attorney

ATTEST:

BY 

City Recorder

**CITY OF TUALATIN
PERSONAL SERVICES AGREEMENT**

THIS AGREEMENT is entered by and between the City of Tualatin, a municipal corporation of the State of Oregon ("City"), and Fregonese Associates ("Provider").

Section 1 - Agreement Documents. The Contract Documents, which together form the complete Contract between the parties, consist of the following documents in descending order of precedence. To the extent there is any conflict between the documents, the conflict is resolved by the order of precedence of the document. There are no Agreement Documents other than those listed: (i) this Agreement; (ii) any documents specifically referenced in this Agreement; and (iii) the attached Scope of Work/Proposal (Attachment A).

Section 2. Work. Provider shall complete all Work that is generally described as set forth in Attachment A, which is incorporated into this Agreement as if fully set forth. All Work shall be performed by qualified personnel and other professionals that are properly licensed under the laws of the State of Oregon. Provider shall be solely responsible for all Work under this Agreement, including all services, labor, materials and supplies, documents, permits and other requirements to complete the Work, whether produced by Provider or any of Provider's subcontractors or contractors, except for those items identified as the responsibility of the City.

Section 3. Effective Date. The effective date of this Agreement is the date both Parties sign this Agreement ("Effective Date"). If the parties sign on separate dates, the latter date shall be the Effective Date.

Section 4. Standard of Care. Provider shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession. Provider will reimburse City for all costs if performance fails to meet this standard.

Section 5. Duty to Inform. If during the performance of this Agreement or in the future, Provider becomes aware of actual or potential problems, faults, or defects in the project, any nonconformance with the federal, state or local law, rule, or regulation, or has any objection to a decision or order made by City with respect to such laws, rules, or regulations, Provider shall give prompt written notice to City's Project Manager. Delay or failure by City to provide a written response to Provider shall not constitute agreement with, nor acquiescence to, Provider's statement or claim, nor constitute a waiver of City's rights.

Section 6. Independent Contractor; Responsibility for Taxes and Withholding

- A. Provider shall perform all Work as an independent Contractor. The City reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product, however, the City may not and will not control the means or manner of Provider's performance. Provider is responsible for determining the appropriate means and manner of performing the Work.
- B. Provider understands and agrees that Provider is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.
- C. Provider shall be responsible for all federal or state taxes applicable to compensation or payments paid to Provider under this Agreement and, unless Provider is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Provider's federal or state tax obligations. Provider is not eligible for any social security, unemployment insurance or workers' compensation benefits from City under this Agreement. Provider is not entitled to, and expressly waives all claims to City benefits, including but not limited to health and disability insurance, paid leave, and retirement.

Section 7. Subcontracting.

- A. Provider's services are unique and as such, shall not enter into any subcontracts for any of the Work required by this Agreement without City's prior written consent.
- B. If City permits a subcontract as set forth in subsection A, Provider shall not be relieved of any of its duties or obligations under this Agreement.
- C. All subcontracts for services shall be issued under written agreements that include all provisions required under Oregon Public Contracting law and substantially similar to the City's Standard Agreement provisions. Provider shall provide City a copy of all Agreements with subcontractors who are performing work under this Agreement, upon request by City.

Section 8. Ownership of Intellectual Property.

A. **Definitions.** As used in this Section 8, and elsewhere in this Agreement, the following terms have the meanings set forth below:

(i) "Provider Intellectual Property" means any intellectual property owned by Provider and developed independently from the Work.

(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than City or Provider.

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Provider is required to deliver to City pursuant to the Work.

B. **Original Works.** All Work Product created by Provider pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of City. City and Provider agree that such original works of authorship are "work made for hire" of which City is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Provider hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City's reasonable request, Provider shall execute such further documents and instruments necessary to fully vest such rights in City. Provider forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. In the event that Work Product created by Provider under this Agreement is a derivative work based on Provider Intellectual Property, or is a compilation that includes Provider Intellectual Property, Provider hereby grants to City an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre existing elements of the Provider Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf. In the event that Work Product created by Provider under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Provider shall secure on the City's behalf and in the name of the City an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf.

C. **Provider Intellectual Property.** In the event that Work Product is Provider Intellectual Property Provider hereby grants to City an irrevocable, nonexclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Provider Intellectual Property, and to authorize others to do the same on City's behalf.

D. **Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Provider shall secure on the City's behalf and in the name of the City, an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on City's behalf.

Section 9. Price; Payment Process.

A. **Agreement Price.** City agrees to pay Provider the not to exceed price of \$302,915 which is inclusive of all hours necessary to complete the Work. City certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement.

B. **Payment Process.** Provider shall furnish City an invoice for services on a monthly basis. The invoice shall contain an itemized statement showing the work completed by Provider. City will pay Provider for services invoiced within 30 days of receiving an itemized invoice ("net thirty"), unless City's disputes the invoice, in which case City will only pay for those services not in dispute. Any invoice received more than ninety (90) days after final payment is made or contract terminated may be considered null and void by the City and Provider shall have no right to payment for the invoiced amount.

Section 10. Notice to Parties. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, mail, facsimile, or email.

A. **Notice By Personal Delivery.** Any communication or notice given by personal delivery shall be effective when actually delivered.

- B. Notice by Mail.** Notice given by mail shall be by postage prepaid, to Provider or City at the address, set forth herein, or to such other addresses or numbers as either party may indicate. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing.
- C. Notice by Facsimile.** Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against City, any notice transmitted by facsimile must be confirmed by telephone notice to City's Agreement Administrator.
- D. Notice by Email.** Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- E. Notice to Project Manager.** Unless otherwise notified in writing as set forth above, notices shall be given to the Project Managers. If a Party's Project Manager is changed, notification of the change shall be promptly made in writing to the other party. If a party receives a communication from the other party not executed by the Project Manager, the party may request clarification by the other party's Project Manager, which shall be promptly furnished.

1. City's Project Manager

Cindy L. Hahn, AICP, Associate Planner
City of Tualatin, 18880 SW Martinazzi Avenue, Tualatin OR 97062
Phone: 503-691-3029
Fax: 503-692-0147
Email: chahn@ci.tualatin.or.us

2. Provider's Project Manager

Leila Aman, Principal
Fregonese Associates, 1525 SW Park Ave, Portland OR 97201
Phone: (O) 503.228.3054, (C) 971-244-4163
Fax: 503-525-0478
Email: leila@frego.com

Section 11. Assignment of Agreement. No assignment of any rights, duties, responsibilities, or interests in the Agreement will be binding on the other party without the written consent of the party sought to be bound. No assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.

Section 12. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

Section 13. Severability. If any term or provision of this Agreements is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Section 14. Merger Clause; Waiver. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind the parties unless in writing and signed by both parties and all necessary City approvals have been obtained. Any waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

Section 15. Records Maintenance; Access. Provider shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Provider shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Provider's performance. Provider acknowledges and agrees that City, the State of Oregon, and the federal government and their duly authorized representatives shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of Provider that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Provider shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

Section 16. No Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement. Provider and the City are the only parties to this Agreement and are intended to be the only entities entitled to exercise and enforce the rights and obligations created by this Agreement.

Section 17. Nondiscrimination; Compliance with Applicable Law. Provider agrees that no person shall, on the grounds of race, color, religion, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or veteran status suffer discrimination in the performance of this Agreement. Provider shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement.

Section 18. Registered in Oregon and City of Tualatin. If Provider is not domiciled in or registered to do business in the State of Oregon, Provider 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 Agreement. Provider shall demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon prior to entering into this Agreement. Provider shall have or acquire a City business license prior to executing this Agreement.

Section 19. Use of Recycled Products. Provider shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

Section 20. Force Majeure. Neither City nor Provider shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of City or Provider, respectively. Provider shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

Section 21. Survival. All rights and obligations of the parties shall cease upon termination or expiration of this Agreement, except for the rights and obligations of a party for payment of completed Work, indemnity, dispute resolution, maintenance of insurance, and those provisions, including, but not limited to, provisions concerning property rights and governing laws which, by their nature, must survive termination to accomplish the intent of the parties as expressed in this Agreement.

Section 22. Joint and Several Liability. In the event Provider includes more than one person or entity, all such persons or entities shall be jointly and severally liable for all conditions herein.

Section 23. Indemnification.

- A. **General indemnity.** Provider shall defend, save, hold harmless, and indemnify the City, its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the acts or omissions of Provider or its officers, employees, subcontractors, or agents.
- B. **Indemnity for infringement claims.** Without limiting the general indemnity, Provider expressly agrees to defend, indemnify, and hold City, its officers, employees, and agents harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the work, the work product or any other tangible or intangible items delivered to the City by Provider that may be the subject of protection under any state or federal intellectual property law or doctrine, or the City's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that city shall provide Provider with prompt written notice of any infringement claim.
- C. **Control of defense and settlement.** Provider shall have control of the defense and settlement of any claim that is subject to indemnity; however, neither Provider nor any attorney engaged by Provider shall defend the claim in the name of the City, nor purport to act as legal representative of the City or any of its officers, employees, or agents, without first receiving from the City, in a form and manner determined appropriate by the City, authority to act as legal counsel for the City, nor shall Provider settle any claim on behalf of the City without the approval of the City. The City may, at its election and expense, assume its own defense and settlement in the event that the City determines that Provider is prohibited from defending the City, or is not adequately defending the City's interests, or that an important governmental principle is at issue and the City desires to assume its own defense.

Section 24. Insurance. Provider shall provide City a copy of each insurance policy, issued by a company currently licensed in the State of Oregon and certified as a true copy by an authorized representative of the issuing company or a certificate in a form satisfactory to City certifying to the issuance of such insurance. All policies shall provide for not less than 30 days' prior written notice to City before they may be revised, non-renewed, canceled, or coverage reduced. All policies shall provide an endorsement naming the City, its officers, employees, and agents as additional insureds.

- A. **Automobile.** Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of

the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$2,000,000 combined single limits.

- B. **General.** Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any act or omission of Provider or of any of its employers, agents, or subcontractors, with \$2,000,000 per occurrence and in the aggregate.
- C. **Primary.** Coverage provided by the policy(ies) shall be primary and any other insurance carried by City is excess. Provider shall be responsible for any deductible amounts payable under all policies of insurance.
- D. **Workers Compensation.** Provider, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017.

Section 25. Execution of Agreement. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

Section 26. Governing Law; Venue; Consent to Jurisdiction.

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. This Agreement shall not be construed against either party regardless of which party drafted it. Other than as modified by this Agreement, the applicable rules of Agreement construction and evidence shall apply. In any litigation, the entire text of any order or permit issued by a governmental or regulatory authority, as well as any documents referenced or incorporated therein by reference, shall be admissible for the purpose of Agreement interpretation.
- B. Any claim, action, suit or proceeding (collectively, "Claim") between City and Provider that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Washington County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver of any form of defense or immunity from any Claim or from the jurisdiction of any court.

Section 27. Public Contracting Requirements. Provider shall comply with the provisions of ORS 279A.110; ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. City's performance under the Agreement is conditioned upon Provider's compliance.

Section 28. Default; Remedies; Termination.

- A. **Default by Provider.** Provider shall be in default under this Agreement if:
 - (i) Provider institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
 - (ii) Provider no longer holds a license or certificate that is required for Provider to perform its obligations under the Agreement and Provider has not obtained such license or certificate within fourteen (14) calendar days after City's notice or such longer period as City may specify in such notice; or
 - (iii) Provider commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Provider's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after City's notice, or such longer period as City may specify in such notice.
- B. **City's Remedies for Provider's Default.** In the event Provider is in default, City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:
 - (i) termination of this Agreement;
 - (ii) withholding all monies due for Work and Work Products that Provider has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
 - (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; and
 - (iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Provider was not in default, then Provider shall be entitled to the same remedies as if this Agreement was terminated.

C. Default by City. City shall be in default under this Agreement if:

(i) City fails to pay Provider any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Provider's notice or such longer period as Provider may specify in such notice; or

(ii) City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within thirty (30) calendar days after Provider's notice or such longer period as Provider may specify in such notice.

D. Provider's Remedies for City's Default. In the event City terminates the Agreement, or in the event City is in default and whether or not Provider elects to exercise its right to terminate the Agreement, Provider's sole monetary remedy shall be:

(i) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Agreement but not yet billed, authorized expenses incurred and interest of two-thirds of one percent per month, but not more than eight percent per annum; and

(ii) with respect to deliverable based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim(s) that City has against Provider. In no event shall City be liable to Provider for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Provider exceed the amount due to Provider under this subsection, Provider shall pay immediately any excess to City upon written demand provided.

E. Mutual Termination. City and Provider may terminate this Contract by mutual written consent at any time.

F. Termination By City. At its sole discretion, City may terminate this Agreement:

(i) For any reason upon thirty (30) days' prior written notice by City to Provider;

(ii) Immediately upon written notice if City fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or

(iii) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the City's purchase of the Work or Work Products under this Agreement is prohibited or City is prohibited from paying for such Work or Work Products from the planned funding source.

(iv) Immediately upon written notice by City to Provider, or at such later date as City may establish in such notice, upon the occurrence of Default by Provider.

G. Termination By Provider. Provider may terminate this Agreement with such written notice to City upon the occurrence of the following events:

(i) City is in default because City fails to pay Provider any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Provider's notice of the failure to pay or such longer period as Provider may specify in such notice; or

(ii) City is in default because City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and City fails to cure such failure within thirty (30) calendar days after Provider's notice or such longer period as Provider may specify in such notice.

H. Return of Property Upon Termination. Upon termination of this Agreement for any reason whatsoever, Provider shall immediately deliver to City all of City's property (including without limitation any Work or Work Products for which City has made payment in whole or in part) that is in the possession or under the control of Provider in whatever stage of development and form of recordation such City property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Provider shall immediately cease all activities under this Agreement, unless City expressly directs otherwise in such notice of termination. Upon City's request, Provider shall surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

Section 29. Dispute Resolution. The Parties shall exercise good faith and due diligence to resolve any disputes that may arise between them. The Parties will work amicably to resolve disputes. If a dispute cannot be resolved, the Parties shall submit the matter to mediation. The mediator shall be chosen by mutual agreement. If a mediator cannot be agreed upon, the Parties agree to present the dispute to a mediator selected by the Presiding Judge of Washington County Circuit Court. The mediation fee shall be borne equally by the Parties. If the dispute cannot be resolved through discussion, negotiation or mediation, either Party may pursue resolution by litigation, as provided the jurisdictional provision of this Agreement.

Section 30. Attorney Fees. If any suit, action, arbitration or other proceeding is instituted upon this Agreement or to enforce any rights herein or otherwise pursue, defend or litigate issues related to this Agreement, each party shall be liable for their own attorneys' fee and costs, including those on appeal. The parties each agree and hereby waive any right to attorney fees granted by statute or rule that conflicts with this provision.

Section 31. Public Records Law. Provider acknowledges that any disclosures Provider makes to City under this Contract are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.410- 192.505, the provisions for the Custody and Maintenance of Public Records. The non-disclosure of documents or of any portion of a document submitted by Provider to City may depend upon official or judicial determinations made pursuant to the foregoing laws. Provider will be notified prior to City's release of documents. Provider shall be exclusively responsible for defending Provider's position concerning the confidentiality of the requested documents, at its own expense.

Section 32. Confidentiality and Protection of Personal Information. Provider acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of information that is exempt from disclosure to the public under Oregon's Public Records Laws, the Oregon Consumer Identity Theft Protection Act, ORS 646A.600- 646A.628, or other state or Federal statutes. Provider agrees to hold such information in strictest confidence and not to make use of such information for any purpose other than the performance of this Agreement, to release it only to authorized employees or subcontractors requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without City's express written consent or as provided by law.

PROVIDER, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT PROVIDER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

APPROVED AND ENTERED this 27th day of January 2014:

Fregonese Associates
PROVIDER

By John Fregonese
Title President

20-9319355
Provider's Federal ID Number or
Social Security Number

CITY OF TUALATIN

By Sherilyn Lombos
Sherilyn Lombos,
City Manager

APPROVED AS TO LEGAL FORM
[Signature]
City Attorney