

RESOLUTION NO. 1577

A RESOLUTION AUTHORIZING EXEMPTION FROM COMPETITIVE BIDDING AND  
AWARDING A CONTRACT TO OBEC CONSULTING ENGINEERS FOR MINGUS CREEK  
CULVERT REPLACEMENT

Recitals:

- A. Whereas, ORS 279.110(8) and the Attorney General Model Public Contracting Rules authorize a contracting agency to enter into a consulting contract by direct appointment where the estimated cost of the engineering services do not exceed \$100,000.00.
- B. Whereas, the City finds that OBEC Consulting Engineers has the specialized technical skills, expertise and resources to provide the City with a cost-effective and time-sensitive plan to evaluate, design and permit the replacement of two Mingus Creek Culverts crossing Freeman Road.
- C. Whereas the City finds that time is of the essence in replacing these culverts.

The City of Central Point resolves as follows:

Section 1. A contract in the form attached hereto as Exhibit A is hereby awarded to OBEC Consulting Engineers for an amount not to exceed \$62,454.40 for evaluation, design, and permitting of replacement of the two Mingus Creek Culverts crossing Freeman Road.

Section 2. This direct appoint is granted under the provisions of Oregon Revised Statutes 279C.110(8) and OAR 137-048-0200(1)(b).

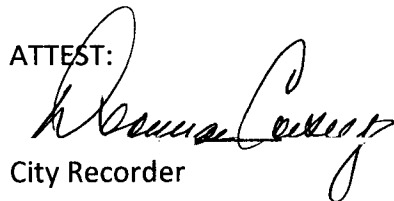
Section 3. The City Manager or his designee is authorized to execute the contract and to take such other steps as necessary to effectuate the approval of the agreement.

Passed by the Council and signed by me in authentication of its passage this 23<sup>rd</sup> day of May, 2019.



Mayor Hank Williams

ATTEST:



City Recorder

**CITY OF CENTRAL POINT  
PROFESSIONAL SERVICES CONTRACT  
Mingus Creek Culvert Replacement  
OBEC Job No. P548-0026.00**

This contract is made between the City of Central Point (City) and OBEC Consulting Engineers (Consultant).

**Consultant Information:**

Full Legal name or business name:

Address

City:

Zip Code:

Telephone:

FAX:

City and Consultant agree:

1. **Services to be provided.** Consultant will provide to the City the services set forth in Exhibit B.
2. **Effective Date or Duration.** This contract is effective on the date at which every party has signed this contract. This contract shall expire, unless otherwise terminated or extended, on April 1, 2020.
3. **Compensation.** City agrees to pay Consultant a sum not to exceed \$62,454.40 for the services to be provided. A written approval in the form of an amendment of this contract will be obtained where there will be changes in the scope of work, amount of contract or time. Payment will be made:
  - Upon completion; or,
  - City shall pay Consultant for services and reimburse Consultant for expenses incurred by Consultant in performance of services in accordance with a payment schedule to be submitted by Consultant and accepted by City. No reimbursement will be made for expenses that are not specifically itemized in this payment schedule without prior approval by City. Consultant shall submit monthly invoices to City for Consultant's services within ten days after the end of the month covered by the invoice. Total payments under this contract or any amendments shall not exceed the sum specified in this section 3.
4. **Authorized Consultant Representative.** The authorized representative for Consultant is Dana Crawford.
5. **Standard Contract Provisions.** Consultant shall comply with the City's Standard Contract Provisions for Professional Services as modified for this contract, a copy of which is attached as Exhibit A.

CITY OF CENTRAL POINT

CONSULTANT

By:

By:

Title:

Title:

Date:

Date:

Tax Id. No.:

CP Business License #.:

Form 1099:    On file:   X      Attached:

## EXHIBIT A

### CITY OF CENTRAL POINT CONTRACT PROVISIONS FOR PROFESSIONAL SERVICES

1. **Qualified Personnel.** Consultant has represented, and by entering into this contract now represents, that all personnel assigned to the services required under this contract are fully qualified to perform the service to which they will be assigned in a skilled and worker-like manner and, if required to be registered, licensed or bonded by the State of Oregon, are so registered, licensed and bonded.
  - 1.1 **Standard of Care—Professional Services.**  
Subject to the express provisions of the agreed scope of work as to the degree of care, amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, Consultant shall perform its Services in accordance with generally accepted standards and practices customarily utilized by competent engineering firms in effect at the time Consultant's Services are rendered. Consultant does not expressly or impliedly warrant or guarantee its Services.
  - 1.2 **Reliance upon Information Provided by Others.**  
If Consultant's performance of services hereunder requires Consultant to rely on information provided by other parties (excepting Consultant's subcontractors), Consultant shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so in writing by Client.
  - 1.3 **Consultant's Opinion of Costs.**  
Client acknowledges that construction cost estimates, financial analyses and feasibility projections are subject to many influences including, but not limited to, price of labor and materials, unknown or latent conditions of existing equipment or structures, and time or quality of performance by third parties. Client acknowledges that such influences may not be precisely forecasted and are beyond the control of Consultant and that actual costs incurred may vary substantially from the estimates prepared by Consultant. Consultant does not warrant or guarantee the accuracy of construction or development cost estimates.
2. **Contract Renewal.** The City shall have the option to renew this contract annually after the initial term has expired. Each renewal shall be with such modifications as may be agreed to by the parties in a written amendment of the contract, provided that the amendments made for any renewal term may not increase the total compensation to be paid to Consultant by more than 10 percent or increase the rate of compensation for any contract Service by more than 5 percent.
3. **Authorized Representative for City.** The City's authorized representative is either the City Manager, the Public Works Director, or a duly authorized representative.
4. **Notices.** Any notice permitted or required by this contract shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, and with return receipt requested, to the persons and addresses shown below. In addition, if directions for telephonic transmission ("FAX") are set forth below, notices may be delivered by FAX. Notices sent by certified mail will be deemed delivered three business days after placement in the mail and notices sent by FAX will be deemed delivered when successful transmission is electronically confirmed. Except as expressly provided in the contract, required notices must be signed by the person designated to receive notices, or that person's designee or attorney.

Consultant: Authorized Representative named on pages 1 and 2 at address for Consultant listed on pages 1 and 2.

City: Authorized Representative (see section 3 of this page), 140 South Third Street, Central Point, Oregon 97502

Each party shall notify the other of any change in the name, address or FAX instructions to be used for delivery of notices.

**5. Termination.** Notwithstanding any other provision to the contrary, this contract may be terminated as follows:

- 5.1. The parties, by mutual written agreement, may terminate this contract at any time.
- 5.2. Either party may terminate this contract in the event of a breach of the contract by the other party.
- 5.3. The City may terminate this contract at any time or for any reason, upon not less than ten days' notice in advance of the termination date.
- 5.4. City may terminate this contract immediately upon Consultant's failure to have in force any insurance required by this contract.

Except as provided in section 6, in the event of a termination, City shall pay Consultant for work performed to the date of termination.

**6. Remedies.**

- 6.1. In the event of a termination of this contract by City because of a breach by Consultant, City may complete the Services either by itself or by contract with other persons, or any combination. Consultant shall be liable to City for any costs or losses incurred by City arising out of or related to the breach, including costs incurred in selecting other contractors, time-delay losses, attorney fees and the like, less the remaining unpaid balance of the consideration provided in this contract. City may withhold payment of sums due Consultant for work performed to the date of termination until City's costs and losses have been determined, at which time City may offset any such amount due Consultant against the costs and losses incurred by City.
- 6.2. The foregoing remedies provided to City for breach of this contract by Consultant shall not be exclusive. City shall be entitled to exercise any one or more other legal or equitable remedies available because of Consultant's breach.
- 6.3. In the event of breach of this contract by City, Consultant's remedy shall be limited to termination of this contract and payment for work performed to the date of termination.
- 6.4. The Consultant shall be allowed to remedy a breach of this agreement by curing such breach or making reasonable progress toward its cure within 15 days after City has given written notice of alleged breach to Consultant.
- 6.5. The City shall be allowed to remedy a breach of this agreement by curing such breach or making reasonable progress toward its cure within 15 days after Consultant has given written notice of the alleged breach to the City or upon five days' notice if work under this Agreement has been suspended by either City or Consultant for more than 30 days in the aggregate.

**7. Records/Inspection.** Consultant shall maintain records of its charges to City under this contract for a period of not less than 3 (three) full fiscal years following Consultant's completion of this contract. Upon reasonable advance notice, City or its authorized representatives may from time to time inspect, audit and make copies of any of Consultant's records that relate to this contract. If any audit by City discloses that payments to the Consultant were in excess of the amount to which Consultant was entitled under this contract, Consultant shall promptly pay to City the amount of such excess. If the excess is greater than one percent of the contract amount, Consultant shall also reimburse City its reasonable costs incurred in performing the audit.

**8. Ownership of Work Product.** All work product of Consultant that results from this Agreement (the work product) is the exclusive property of City, once the Consultant has been paid for services rendered.

City and Consultant intend that such work product be deemed "work made for hire" of which City shall be deemed the author. If for any reason the work product is not deemed "work made for hire," Consultant irrevocably assigns to City all its right, title, and interest in and to any and all of the work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law

or doctrine. Consultant shall execute such further documents and instruments as City may reasonably request in order to fully vest such rights in City. Consultant forever waives any and all rights relating to the work product, 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. The City agrees to hold harmless and indemnify the Consultant from any and all liability whatsoever, associated with any reuse of work products generated by this work project, beyond the original purpose intended by this contract.

9. **Indemnification.** Except for claims that relate to professional liability, Consultant shall defend indemnify and save City, its officers, employees and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, subrogations, or other damages resulting from injury to any person (including injury resulting in death,) or damage (including loss or destruction) to property, of whatsoever nature arising out of or incident to the performance of this agreement by Consultant (including but not limited to, Consultant's employees, agents, and others designated by Consultant to perform work or services attendant to this agreement). Consultant shall not be held responsible for damages caused by the negligence of City. If the claim or liability results from error or omissions in the products, results, analyses, opinions, recommendations, directions, designs, or other manifestation of Consultant's professional services, including any other professional act, error or omission that is subject to professional standards of care, the obligation of Consultant hereunder shall only exist to the extent of Consultant's negligence or willful misconduct.
10. **Workers' Compensation.** If Consultant will perform the work with the help of others, Consultant shall comply with the Oregon Workers' Compensation law by qualifying as a carrier-insured employer or as a self-insured employer and shall strictly comply with all other applicable provisions of such law. Consultant shall provide the City with such further assurances as City may require from time to time that Consultant is in compliance with these Workers' Compensation coverage requirements and the Workers' Compensation law.
11. **Insurance.** Consultant shall have and maintain the insurance policies specified below. Each policy of insurance shall be written as a primary policy, not contributing with or in excess of any coverage which City may carry. A copy of each policy or a certificate satisfactory to City shall be delivered to City prior to commencement of the Services. The adequacy of all insurance policies for compliance with this Section 11 shall be subject to approval by City's Risk Manager. Failure to maintain any insurance coverage required by the contract shall be cause for immediate termination of the contract by City.

Unless otherwise specified, each policy shall be written on an "occurrence" form with an admitted insurance carrier licensed to do business in the state of Oregon; and shall contain an endorsement entitling City to not less than 30 days prior written notice of any material change, non-renewal or cancellation. In the event the statutory limit of liability of a public body for claims arising out of a single accident or occurrence is increased above the combined single limit coverage requirements specified below, City shall have the right to require that Consultant increase the coverage limits of all liability policies by the amount of the increase in the statutory limit.

- 11.1. **Commercial General Liability.** Consultant shall maintain a broad form commercial general liability insurance policy with coverage of not less than \$1,000,000 combined single limit per occurrence, and as an annual aggregate, for bodily injury, personal injury or property damage. The policy shall have a contractual liability endorsement to cover Consultant's indemnification obligations under the contract. The policy shall also contain an endorsement naming City as an additional insured, in a form satisfactory to City, and expressly providing that the interest of City shall not be affected by Consultant's breach of policy provisions.
- 11.2. **Workers' Compensation Insurance.** Unless Consultant is exempt, Consultant shall comply with the Oregon Workers' Compensation law by qualifying as a carrier-insured employer or as a self-insured employer and shall strictly comply with all other applicable provisions of such law. Consultant shall provide City with such assurances as City may require from time to time that Consultant is in compliance with these Workers' Compensation coverage requirements and the Workers' Compensation law.
- 11.3. **Comprehensive Automobile Liability.** If Consultant will use a motor vehicle on a regular basis in the performance of the Services, Consultant shall maintain automobile liability insurance coverage of not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury or property

damage for each motor vehicle owned, leased or operated under the control of Consultant for, or in the performance of, the services.

- 11.4. **Professional Liability.** If Consultant is required to be licensed by the State of Oregon to perform the Services, Consultant shall maintain a professional liability insurance policy with coverage limits of not less than \$1,000,000 per claim, and a deductible or self insured retention of not more than \$250,000 per claim to protect Consultant from claims by City or others for injury, loss or damage arising from or resulting from the wrongful or negligent performance or non-performance of, the Services. The policy shall contain an endorsement entitling City to not less than 60 days prior written notice of any material change, non-renewal or cancellation of such policy. This policy may be written on a "claims made" form, provided that continuous coverage is maintained to cover claims made within two years after completion of the Services.
12. **Assignment/Subcontracting.** Consultant shall not assign this contract, in whole or in part, or any right or obligation, without City's prior written approval. Consultant shall require any approved subcontractor to agree, as to the portion subcontracted, to comply with all obligations of Consultant specified in this contract. Notwithstanding City's approval of a subcontractor, Consultant shall remain obligated for full performance of this contract and City shall incur no obligation to any subcontractor. Consultant shall indemnify, defend and hold City harmless from claims of subcontractors related to the performance of the Consultant's duties under this agreement.
13. **Independent Contractor.** Whether Consultant is a corporation, partnership, other legal entity or an individual, Consultant is an independent contractor. If Consultant is an individual, Consultant's duties will be performed with the understanding that Consultant is a self-employed person, has special expertise as to the services which Consultant is to perform and is customarily engaged in the independent performance of the same or similar services for others. The manner in which the services are performed shall be controlled by Consultant; however, the nature of the services and the results to be achieved shall be specified by City. Consultant is not to be deemed an employee or agent of City and has no authority to make any binding commitments or obligations on behalf of City except to the extent expressly provided in this contract.
14. **Compliance with Laws/Business License.** Consultant shall comply with all applicable Federal, State and local laws, rules, ordinances and regulations at all times and in the performance of the Services, including, but not limited to those laws pertaining in nonresident contractors in ORS 279A.120 and all applicable provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235, and 279B.240. Consultant shall obtain a City of Central Point business license as required by the city municipal code prior to beginning work under this contract. The Contractor shall provide a business license number in the space provided on pages one and two of this contract.
15. **Governing Law.** This agreement shall be governed and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between City and Consultant that arises out of or relates to performance of this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Jackson County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
16. **Attorney Fees.** In the event of any action to enforce or interpret this contract, the prevailing party shall be entitled to recover from the losing party reasonable attorney fees incurred in the proceeding, as set by the court, at trial, on appeal or upon review.
17. **Integration.** This contract embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained in this contract. This contract shall supersede all prior communications, representations or agreements, either oral or written, between the parties. This contract shall not be amended except in writing, signed by both parties.

**EXHIBIT B**

**[Insert Scope of Work]  
SCOPE OF WORK**