

**CITY OF PORT ORFORD
SPECIAL SESSION OF THE COMMON COUNCIL
BY VIRTUAL MEETING
TUESDAY FEBRUARY 1, 2022
At 10:00am EST
AGENDA**

1. Call to Order

2. Contract with Gary Milliman

3. Adjourn

Special Session – Contact
Tue, Feb 1, 2022 10:00 AM - 11:00 AM (PST)

Please join my meeting from your computer, tablet or smartphone.
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Access Code: 153-731-117

ORS 192.630 “The Public Meetings Law is a public attendance law, **not a public participation law**. The right of public attendance guaranteed by the Public Meetings Law does **not include** the right to participate by **public testimony or comment.**”

“Attorney General’s Public Records and Meetings Manual”

PERSONAL SERVICES AGREEMENT

<p>CITY OF PORT ORFORD POST OFFICE BOX 310 PORT ORFORD, OREGON 97465</p> <p>(541) 366-4570</p>	<p>CONSULTANT: GARY MILLIMAN</p> <p>ADDRESS: 1090 PARKVIEW DRIVE BROOKINGS, OREGON 97415</p> <p>TELEPHONE: (541) 813-9267</p>
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This Personal Services Agreement (hereinafter "Agreement") is entered into by and between the City of Port Orford, an Oregon municipal corporation (hereinafter "City") and Gary Millman ("hereinafter "Consultant"), for consultation and support services.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the City and Consultant hereby agree as follows:

- 1. Effective Date and Duration:** This Agreement shall become effective on _____, **2022**, (the "Effective Date"), and unless sooner terminated as specifically provided herein, shall continue in full force and effect until _____, **2022**.
- 2. Scope of Work:** Consultant will provide consultation and support services as generally described in Exhibit A attached hereto on an "as needed" basis. Consultant's services are collectively referred to herein as the "Work."
- 3. Supporting Documents/Exhibits; Conflicting Provisions:** This Agreement and any exhibits or other supporting documents shall be construed to be mutually complementary and supplementary wherever possible. In the event of a conflict which cannot be so resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the exhibits or supporting documents.
- 4. Costs Borne by Consultant:** Consultant shall, at its own risk, perform the Work described above and, unless otherwise specified in this Agreement, furnish all labor, equipment, and materials required for the proper performance of such Work.
- 6. Compensation:** City shall pay Consultant the sum of **\$50.00** per hour for all Work performed including travel time as full compensation for Consultant's performance of all Work under this Agreement. In no event shall Consultant's total of all compensation and reimbursement under this Agreement exceed the sum of **\$15,000.00 (fifteen thousand U. S. dollars)** without the express, written approval from the City official whose signature appears below, or such official's successor in office. Payments shall be made within thirty (30) days of the date of receipt by the City of Consultant's invoice. Should this Agreement be terminated prior to completion of all

Work, payments will be made for any phase of the Work completed and accepted as of the date of termination.

7. **Ownership of Work/Documents:** All Work, work product, or other documents produced in furtherance of this Agreement belong to the City, and any copyright, patent, trademark proprietary or any other protected intellectual property right shall vest in and is hereby assigned to the City.
8. **Statutory Requirements:** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
9. **Indemnification:** Consultant hereby agrees to defend, indemnify, save, and hold City, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, 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). However, Consultant shall not be held responsible for any losses, expenses, actions, costs, or other damages, caused solely by the gross negligence of City.
10. **Termination:**
 - a. Mutual Consent. This Agreement may be terminated at any time by the mutual consent of both parties.
 - b. City's Convenience. This Agreement may be terminated by City at any time upon not less than thirty (30) days' prior written notice delivered by certified mail or in person.
 - c. For Cause. City may terminate or modify this Agreement, in whole or in part, effective upon delivery of written notice to Consultant, or at such later date as may be established by City under any of the following conditions:
 - i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
 - ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement; or
 - iii. If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.
 - d. For Default or Breach.
 - i. Either City or Consultant may terminate this Agreement in the event of a breach of

the Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and its intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, or within such other period as the party giving the notice may authorize in writing, then the Agreement may be terminated at any time thereafter by a written notice of termination by the party giving notice.

- ii. Time is of the essence for Consultant's performance of each and every obligation and duty under this Agreement. City, by written notice to Consultant of default or breach, may at any time terminate the whole or any part of this Agreement if Consultant fails to provide the Work called for by this Agreement within the time specified herein or within any extension thereof.
- iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

- 11. **Independent Contractor Status:** Consultant is an independent contractor and not an employee of the City for any purpose.
- 12. **Assignment:** Consultant shall not assign this Agreement or subcontract any portion of the Work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void.
- 13. **Default.** The Consultant shall be in default of this Agreement if Consultant: commits any material breach or default of any covenant, warranty, certification, or obligation under the Agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in its obligations under the Agreement; or attempts to assign rights in, or delegate duties under, this Agreement.
- 14. **Insurance.** Consultant shall, at its own expense, maintain the following insurance:
 - a. Workers' Compensation. Consultant shall obtain and maintain Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon Workers' Compensation coverage for its subject workers, unless such employers are exempt under ORS 656.126. Consultant hereby certifies such exemption as he has no employees.
 - d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
 - e. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days' prior written notice from the Consultant or its insurer(s) to the City.

15. Nondiscrimination: Consultant agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of any Work under this Agreement when employed by Consultant. Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Consultant agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.

16. Consultant's Compliance With Tax Laws:

16.1 Consultant represents and warrants to the City that:

16.1.1 Consultant shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

16.1.2 Consultant, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

17. Governing Law; Jurisdiction: This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Curry County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue.

18. Notice. Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return

receipt requested, postage prepaid, or by electronically confirmed at the address or facsimile number set forth below:

If to the City:

Pat Cox
Mayor
City of Port Orford
PO Box 310
Port Orford, Oregon 97465

If to Consultant:

Gary Milliman
1090 Parkview Drive
Brookings, Oregon 97415

- 19. **Amendments.** This Agreement may be amended only by written instrument executed by both parties with the same formalities as this Agreement.
- 20. THIS AGREEMENT AND THE ATTACHED EXHIBITS CONSTITUTE THE ENTIRE UNDERSTANDING BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, EITHER ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONSULTANT, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

CITY OF PORT ORFORD:

GARY MILLIMAN (CONSULTANT):

By: _____
Pat Cox, Mayor

By: _____
Gary Milliman

Date: _____

Date: _____

