

STAFF REPORT

For Meeting of April 27, 2015

MAYOR AND MEMBERS OF THE CITY COUNCIL

Agenda Item #

NO. 2015-

SUBJECT:
Engineering Contract

Subject

Approve a master services agreement with Anderson Perry & Associates, Inc. for engineering services.

Summary and Background

This agreement will make Anderson Perry & Associates (AP) the City of Hermiston's new engineer of record.

This agreement is substantively the same as what was considered by Council at its April 13 meeting. Minor changes were made regarding the contract term, payment disputes, and indemnification.

Fiscal Information

The contract establishes the hourly rate for all of the various technicians and engineers who may work on projects for the City. Based on the basic contract, their basic service will cost approximately \$90,000 per year.

Alternatives and Recommendation

Alternatives

1. Approve the master service agreement with Anderson Perry & Associates.
2. Direct staff to renegotiate the MSA.
3. Direct staff to re-issue the RFP.

Recommendation

Approve the Master Service Agreement. Because hiring a part-time engineer would be very difficult to find someone qualified, and the engineer would still need to hire consultants for specialized work, this arrangement appears to be the best mid-point between hiring an in-house engineer and continuing with our current arrangement.

Requested Action/Motion

Motion to approve the master services agreement with Anderson Perry & Associates for engineering services.

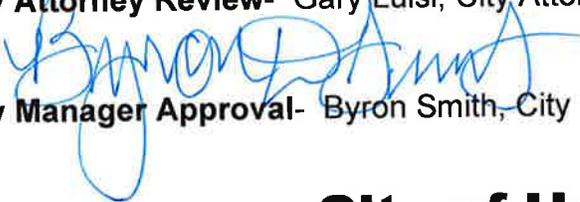
Department Head- Mark Morgan, Assistant City Manager



City Attorney Review- Gary Luisi, City Attorney



City Manager Approval- Byron Smith, City Manager



City of Hermiston

AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT, made this 27th day of April, 2015, by and between the **City of Hermiston, Oregon**, hereinafter referred to as the **OWNER**, and **Anderson Perry & Associates, Inc.**, hereinafter referred to as the **ENGINEER**:

The **OWNER** has need of Engineering Services from time to time for a variety of projects within the City of Hermiston. The **OWNER** hereby designates the **ENGINEER** as "Engineer of Record for the City of Hermiston." The **OWNER** intends to have the **ENGINEER** provide assistance with these projects and intends to contract for these services on a project-by-project basis by authorizing individual Work Orders which will be extensions of this general engineering agreement, subject to all of the provisions contained herein. The scope of work and cost of services for each specific request shall be described in each Work Order outlining the **ENGINEER's** services. The **ENGINEER**, acting as an independent contractor, agrees to provide the necessary engineering services under the terms and conditions as outlined herein and as may be further detailed and described in the respective Work Orders.

In addition to the on-call services described above, the **OWNER** intends to utilize the **ENGINEER** on a consistent basis to perform engineering duties for the **OWNER**. In order to accomplish this, the **ENGINEER** shall dedicate an Oregon Registered Professional Engineer to be in the City of Hermiston to provide engineering services to the **OWNER** for a minimum of 16 hours per week, expected to consist of two agreed-upon days per week.

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

SECTION A - ENGINEERING SERVICES

WORK ORDERS

The **OWNER** shall request the **ENGINEER** to provide Professional Services whenever the **OWNER** wishes to engage the **ENGINEER**. A Work Order (see general format attached to this Agreement as Exhibit "A") shall be prepared which describes the scope of services to be provided by the **ENGINEER**, any special contractual agreements that are applicable to the Work Order, and the method of compensation for the services to be performed. The **ENGINEER** will provide the services outlined in the Work Order after the Work Order has been approved and authorized by both the **OWNER** and the **ENGINEER's** representatives. Work Orders will be prepared for each specific project or work task to be performed for the **OWNER**.

ENGINEERING SERVICES

When requested by the **OWNER** in a Work Order, the **ENGINEER** may provide engineering services of the general type and scope outlined hereafter. The **OWNER** may provide some of the services outlined hereafter. The detailed scope of the requested **ENGINEER's** services shall be defined in the respective Work Order.

Anticipated work and/or projects that may occur under this Contract includes, but is not limited to:

1. Review and approval of plans for road, sewer, water, storm drainage, geotechnical, grading and other improvements for conformance to City standards and accepted engineering practices for subdivisions and development projects.
2. Coordinating on-site construction inspections of installation of road, sewer, water, storm drainage, and other improvements for conformance to City standards and accepted engineering practices for subdivisions and development projects.
3. Assist in the correct sizing of water meters.
4. Planning, design, and construction management for sewer projects related to the collection system.
5. Planning, design, and construction management for stormwater projects.
6. Provide hydrologic and hydraulic analyses for storm and sewer projects as appropriate.
7. Planning, design, and construction management for street projects.
8. Analysis of traffic impact studies.
9. Planning, design, and construction management for municipal water system projects.
10. Planning, design, and construction management for parks and trail system projects.
11. Consultation on City of Hermiston building projects.
12. Preparing bid packages for smaller and medium-sized public projects.
13. Providing project cost estimates.
14. Performing flow analysis.
15. Using and helping Water Department staff with use of hydrology model.
16. Prepare and monitor Risk Management Plan(s).
17. Provide technical assistance for compliance with local, state, and federal requirements.
18. Design gravel street conversion.
19. Prepare, monitor, and update various plans.
20. Review plans and assist as needed on larger public projects.
21. Assist in developing Capital Improvement Plans for the Water, Sewer, and Street Departments.

22. Assist in developing a Water Master Plan.
23. Assist in developing a Wastewater Master Plan.
24. Provide technical assistance for finding, securing, and administering grant funding.
25. Other services as agreed to between the parties.

SECTION B - COMPENSATION FOR ENGINEERING SERVICES

The OWNER shall compensate the ENGINEER for the various engineering services to be provided on either a Lump Sum Basis or on a Time and Materials Basis as the OWNER and ENGINEER agree. The method(s) of compensation shall be defined in each Work Order and as described herein.

1. Lump Sum Basis

The OWNER shall compensate the ENGINEER on a lump sum amount basis for the tasks defined and at the dollar amounts stated in the respective Work Orders. If during the course of the work, the scope of the work should substantially change, the OWNER and the ENGINEER shall amend the Work Order to cover the revised scope and lump sum cost of services.

2. Time and Materials Basis

The OWNER shall compensate the ENGINEER on a time and materials basis, plus direct reimbursable expenses, for the tasks defined in the respective Work Orders.

The time and materials cost referred to in this Agreement shall be the sum of the "total personnel cost" plus "overhead cost and profit." Total personnel cost includes the base wages paid to employees plus payroll taxes and fringe benefits. Total personnel cost is computed as 1.45 times the base wages paid to employees. This figure shall be adjusted annually to reflect changes in the cost of payroll taxes and fringe benefits. The overhead cost and profit is 1.55 times the total personnel cost. The overhead cost and profit factor may be adjusted annually to reflect the ENGINEER's actual overhead rate.

Direct reimbursable expenses shall include such direct job costs as the cost of travel, subsistence, lodging, special tests and services of special or outside consultants, plus 10 percent to cover handling, overhead, and insurance costs, etc. Mileage shall be charged in accordance with the attached Hourly Fee Schedule. This rate may be adjusted annually to reflect IRS allowances. There shall be no charge for telephone calls, postage, and secretarial services.

3. Hourly Fee Basis

The OWNER shall compensate the ENGINEER on an hourly fee basis, plus direct reimbursable expenses, for the tasks defined in the respective Work Orders. A copy of the current Hourly Fee Schedule is attached to this Agreement. The Hourly Fee Schedule is subject to change on or around April 1 of each year.

4. Payment

The OWNER agrees to pay the ENGINEER for the services outlined in this section on a monthly basis for the actual services provided. The ENGINEER will render to the OWNER an itemized bill at the end of each month, for compensation for such services performed under each separate Work Order during such month, the same to be due and payable by the OWNER to the ENGINEER. Past due amounts owed shall include a service fee charge of 12 percent annual interest beginning the 30th day after the date of billing. The ENGINEER may suspend work under this Agreement until the account is paid in full.

SECTION C - RESPONSIBILITIES OF OWNER

1. The OWNER shall provide the ENGINEER with all criteria and full information as to the OWNER's requirements for the services to be provided, including objectives and constraints, capacity, and performance requirements, and any budgetary limitations.
2. The OWNER shall furnish copies of all design and construction standards that the OWNER will require to be included in the Drawings and Specifications and furnish copies of the OWNER's standard forms, conditions, and related documents for the ENGINEER to include in the Bidding documents, when applicable.
3. The OWNER shall furnish to the ENGINEER all available information pertinent to the work including, if applicable, reports, existing maps, field survey data, rights-of-way, survey information, and known information concerning the existing underground utilities, etc.
4. The OWNER shall provide for full, safe, and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER's services under this Agreement.
5. The OWNER shall give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any development that affects the scope or time of performance of the ENGINEER's services, or any defect or nonconformance in the ENGINEER's services or in the work of any Contractor.
6. The OWNER shall pay for any agency plan review fees, advertisements for bids, building or other permits, licenses, etc., as may be required by local, state, or federal authorities. The OWNER shall secure the necessary land easements, rights-of-way, and construction permits needed for improvements. The ENGINEER can assist with these items, if requested.
7. The OWNER shall examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by the ENGINEER (including obtaining the advice of an attorney, insurance counselor, and other consultants as the OWNER deems appropriate with respect to such examination) and render timely decisions pertaining thereto.

8. The OWNER shall obtain, with guidance from the ENGINEER, reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the project designed or specified by the ENGINEER, and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the project.
9. The OWNER shall attend the Pre-bid Conference, Bid opening, Pre-construction Conferences, construction progress, and other job-related meetings and Substantial Completion, final payment, and warranty inspections.
10. In consideration for negotiated "Standard Travel" rates, the OWNER shall provide an office space for the ENGINEER where the ENGINEER can perform the duties and services described in this Agreement. The ENGINEER may make use of this office space for work with other clients, provided that the work does not interfere with work the ENGINEER is doing for the OWNER. The ENGINEER may make use of the OWNER's existing printers, copiers, phone, computer, and e-mail system for the OWNER's projects. Any copies made by the ENGINEER with the OWNER's equipment for another client shall be billed at the City of Hermiston's current rate for public copies.

SECTION D - TERM OF AGREEMENT

This Agreement may be terminated at any time by either the ENGINEER or OWNER by delivery of written notice to the other at least 30 days prior to the date of termination specified in the notice. Any such termination shall not affect obligations that accrued prior to the date of such notice and for which funding is lawfully available. In addition to the above, a Work Order may be terminated upon mutual agreement of the parties in writing or by either party, with or without cause, upon thirty (30) days' prior written notice to the other party.

SECTION E - GENERAL PROVISIONS

1. This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER. This Agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER.
2. This Agreement is not exclusive to either party. The OWNER may contract with other engineering firms as the OWNER deems appropriate and in the best interest of the OWNER.
3. Approval of a Work Order under this Agreement by the OWNER and the ENGINEER will serve as written authorization for the ENGINEER to proceed with the services called for in this Agreement and as further defined in the respective Work Order. However, the ENGINEER may proceed immediately with the work prior to execution of a Work Order, if requested by the OWNER.
4. Neither party shall hold the other responsible for damages or delays in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.
5. In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties.

One or more waivers by either party of any provisions, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

6. The ENGINEER intends to render his services under this Agreement in accordance with generally accepted professional practices and makes no warranty expressed or implied. The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. The ENGINEER shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, drawings, specifications, reports, and other services.
7. Any opinion of construction costs prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and material, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such opinions as compared to contractor bids or actual costs to the OWNER.
8. The ENGINEER shall acquire and maintain statutory Worker's Compensation insurance coverage, employer's liability, and comprehensive general liability insurance coverage.
9. This Agreement is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other.
10. Original documents, survey notes, tracings and the like, except those furnished to the ENGINEER by the OWNER, are and shall remain the property of the ENGINEER. Documents, including Plans and Specifications, which contain an Engineer's stamp prepared under this Agreement are instruments of service of the ENGINEER. Reuse of any of the Plans and Specifications that may be developed during a project by the OWNER on extensions of the project or on any other project without the written permission of the ENGINEER shall be at the OWNER's risk. The OWNER agrees to defend, indemnify, and hold harmless the ENGINEER from all claims, damages, and expenses including attorneys' fees arising out of any unauthorized reuse of the ENGINEER's instruments of service by the OWNER OR BY OTHER'S AGENTS ACTING THROUGH THE OWNER. The ENGINEER shall make available to the OWNER, when requested, copies of these documents, Plans, photographs, etc., that are prepared as part of the ENGINEER's services under this Agreement. There will be no cost for these documents except for the cost of the labor to compile the documents and the reproduction costs.
11. There are no third party beneficiaries of this Agreement between OWNER and ENGINEER and no third party shall be entitled to rely upon any work performed or reports prepared by the ENGINEER hereunder.
12. Neither the OWNER nor the ENGINEER shall delegate his duties under this Agreement without the written consent of the other.
13. This Agreement may be terminated by either party in the event of default under this contract by the other party. Either party may do so by giving written notice to the other of its intent to terminate this Agreement for substantial failure to perform according to

this Agreement, which written notice shall specify the failure and demand correction or remedy thereof in 20 days. In the event of failure to remedy or correct in 20 days, this Agreement may be terminated in writing at the option of the party giving the prior notice. If this Agreement is terminated, the ENGINEER shall be paid for services based on actual manhours worked to the termination notice date, including reimbursable expenses due, less any amount in dispute.

14. Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the State of Oregon.
15. The OWNER will require that any contractor or subcontractor performing construction work in connection with drawings and specifications produced under this Agreement to hold harmless, indemnify and defend, the OWNER and the ENGINEER, their consultants, and each of their officers, agents, and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the contractor's (or subcontractor's) negligence in the performance of the work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants, or their officers, agents and employees.
16. The OWNER and ENGINEER acknowledge that during construction projects, changes may be required as the result of possible omissions, ambiguities, or inconsistencies in the drawing and specifications or changes that are identified during construction which will result in a better overall project for the OWNER, or changes which are necessary due to unusual field conditions, or construction circumstances beyond the control of the OWNER, ENGINEER or Contractor.

As a consequence of the above, the OWNER realizes that the construction contractors may be entitled to additional payment. The OWNER agrees to set up a reserve in the project budget to be used as required to make additional payments to the construction contractors with respect to such changes. When additional payments are due the contractor they will be made in accordance with an approved change order.

17. The ENGINEER shall comply with all applicable provisions of the Regulations of the U.S. Department of Commerce (Part 8 of Subtitle 15 of the Code of Federal Regulations) issued pursuant to the Civil Rights Act of 1964, in regard to nondiscrimination in employment because of race, religion, color, sex, or national origin. The ENGINEER shall comply with Executive Order 11246 (41 CFR 60-1.4), Section 503 of the Rehabilitation Act of 1973 (41 CFR 60-741.5(a)), Section 402 of the Vietnam Era Veterans Readjustment Act of 1974 (41 CFR 60-250.5(a)), the Jobs for Veterans Act of 2003 (41 CFR 60-300.5(a)), and, the organizing and collective bargaining Clauses of Executive Order 13496 (29 CFR 471). The ENGINEER shall comply with applicable federal, state, and local laws, rules, and regulations concerning Equal Employment Opportunity.
18. ENGINEER agrees to indemnify, defend, and hold harmless the OWNER and its officers, agents, and employees against all liability, loss, and costs arising from actions, suits, claims, or demands for the acts or omissions of ENGINEER and ENGINEER'S officers, agents, and employees, in performance of this contract.

In accordance with the Oregon Tort Claims Act and the Oregon Constitution, OWNER agrees to indemnify, defend, and hold harmless the ENGINEER and its officers, agents,

and employees against all liability, loss, and costs arising from actions, suits, claims, or demands for the acts or omissions of OWNER and OWNER'S officers, agents, and employees, in performance of this contract.

19. Any previous agreements for engineering services from other engineering firms for unfinished projects shall remain valid until the completion of that project.

This Agreement is executed in duplicate the day and year written at the beginning of this Agreement.

OWNER:

City of Hermiston, Oregon

By _____

Name Byron Smith

Title City Manager

ENGINEER:

Anderson Perry & Associates, Inc.

By Brad D. Baird

Name Brad D. Baird, P.E.

Title President

(SEAL)

(SEAL)

By _____

Name _____

Title _____

ATTEST

By Brett Moore

Name Brett Moore, P.E.

Title Secretary-Treasurer

EXHIBIT "A"

WORK ORDER - City of Hermiston, Oregon, and Anderson Perry & Associates, Inc.

Work Order No. _____

Job No. _____

Date _____

I. SCOPE OF SERVICES

In accordance with the AGREEMENT FOR ENGINEERING SERVICES dated _____, the OWNER hereby authorizes the ENGINEER to perform the following professional engineering services:

II. SPECIAL CONDITIONS

SPECIAL CONDITIONS related to this WORK ORDER are as follows:

III. BASIS OF PAYMENT

- Time and Materials Basis
- Lump Sum Basis = (Lump Sum Amount: \$ _____)
- Hourly Fee Basis
- Other as described hereafter:

IV. AUTHORIZATION OF WORK ORDER

OWNER: **City of Hermiston, Oregon**

By: _____

Type Name: _____

Acceptance by ENGINEER: **Anderson Perry & Associates, Inc.**

By: _____

Type Name: Brad D. Baird, P.E.

Hourly Fee Schedule

April 1, 2015

TECHNICIANS AND ENGINEERS	HOURLY RATE
Technician	\$ 30.00
Technician I	\$ 45.00
Technician II	\$ 55.00
Technician III	\$ 60.00
Technician IV	\$ 65.00
Technician V	\$ 70.00
Technician VI	\$ 80.00
Senior Technician I	\$ 85.00
Senior Technician II	\$ 90.00
Senior Technician III	\$100.00
Senior Technician IV	\$105.00
Senior Technician V	\$115.00
Senior Technician VI	\$125.00
Senior Technician VII	\$160.00
Staff Engineer I	\$ 85.00
Staff Engineer II	\$ 95.00
Staff Engineer III	\$100.00
Project Engineer I	\$105.00
Project Engineer II	\$115.00
Project Engineer III	\$120.00
Project Engineer IV	\$125.00
Senior Engineer I	\$130.00
Senior Engineer II	\$140.00
Senior Engineer III	\$145.00
Senior Engineer IV	\$150.00
Senior Engineer V	\$165.00
Senior Engineer VI	\$190.00
Project Representative I	\$ 80.00
Project Representative II	\$ 85.00
Project Representative III	\$ 92.00
Project Representative IV	\$ 98.00
Secretary	\$ 65.00
Overtime Surcharge	\$ 35.00

SURVEYORS AND CREWS

HOURLY RATE

Survey Technician I	\$ 55.00
Survey Technician II	\$ 60.00
Survey Technician III	\$ 65.00
Survey Crew Chief IV	\$ 80.00
Survey Crew Chief V	\$ 85.00
Survey Crew Chief VI	\$100.00
Professional Land Surveyor I	\$ 85.00
Professional Land Surveyor II	\$ 95.00
Professional Land Surveyor III	\$105.00
Professional Land Surveyor IV	\$125.00
Professional Land Surveyor V	\$130.00
GPS Total Station	\$ 38.50
Robotic Survey Station.....	\$ 28.50
Total Station	\$ 21.00
ATV (4-hour minimum)	\$ 28.50
Electro-Fisher	\$ 20.00

STANDARD TRAVEL

Standard Travel shall be considered travel between Hermiston and La Grande and during the course of completion of work within the Hermiston area. Mileage for Standard Travel will be charged at one-quarter the applicable IRS rate for vehicles, which is \$0.575 per mile for standard highway vehicles as of January 1, 2015. Mileage for vans and pickup trucks will be billed at \$0.20 per mile for Standard Travel.

OUT OF TOWN WORK

Mileage for out of town work will be charged at the applicable IRS rate for vehicles, which is \$0.575 per mile for standard highway vehicles as of January 1, 2015. Mileage will be charged at \$0.75 per mile for vans and pickup trucks. Subsistence will be charged either per diem or actual cost, per contract. Lodging will be billed at actual cost. Standard Travel shall not be considered out of town work for the purposes of calculating subsistence and lodging.

OTHER

Other miscellaneous, direct, and outside expenses, including special Consultants, will be charged at actual cost plus 10%.

Expert Witness will be charged at two times the standard hourly rate.

All accounts unpaid 30 days after date of invoice will be charged a service fee of 1.0% per month.