



**STANDARD MASTER AGREEMENT
BETWEEN MORRISON-MAIERLE, INC. AND CLIENT**

Morrison-Maierle Project Number: 5748.002

City Project Number: MM 2016-01

City of Othello "On-Call" Professional Services

This is an Agreement made as of May 16th, 2016 between MORRISON-MAIERLE, INC. (CONSULTANT) and the City of Othello, (CLIENT). In general, CLIENT intends to secure "on-call" transportation engineering and planning support services which will be referred to as the Project.

The CLIENT would like to engage CONSULTANT to provide professional services for a number of Task Orders. This Agreement sets forth the general terms and conditions which shall govern the relationships and performance of the CLIENT and CONSULTANT, if and only if one or more Task Orders are agreed to under this Agreement. Each engagement will be authorized by a Task Order. Each Task Order will document the scope of services, fee estimate, method of payment, and schedule for that task.

CLIENT and CONSULTANT in consideration of their mutual covenants herein agree to the performance of professional services by CONSULTANT and the payment for those services by CLIENT as set forth below:

GENERAL PROVISIONS OF STANDARD AGREEMENT

The following General Provisions of Standard Agreement are integrated into and form a part of this Agreement.

SECTION 1 - BASIC SERVICES OF CONSULTANT

- 1.1 CONSULTANT shall perform the services as set forth in the Scope of Services as described in approved task orders.
- 1.2 Execution of this Agreement by the CLIENT constitutes written authorization for the CONSULTANT to proceed on approved task orders.
- 1.3 CONSULTANT shall serve as the CLIENT'S prime professional consultant representative for work identified in all approved task orders and perform services as set forth in the approved task orders.
- 1.4 CONSULTANT shall advise CLIENT as to the necessity of the CLIENT providing or obtaining from others data or services required for the approved task orders which are not part of the CONSULTANT'S Scope of Services. The CONSULTANT shall not be responsible for any damages or consequences resulting from the CLIENT's failure to provide or obtain the data or services identified, If CONSULTANT recommends any services that the CLIENT declines to authorize, the CLIENT hereby agrees, to the fullest extent permitted by law, to indemnify and hold harmless CONSULTANT, its officers, directors, employees and subconsultants from any damages, liabilities or costs arising out of or in any way connected with CONSULTANT not providing these services.
- 1.5 If a project requires the CONSULTANT'S services during the construction phase of a project, the scope of services shall be as set forth in each task order. CONSULTANT will determine, in general, if the Contractor's work is proceeding in accordance with the Contract Documents. CONSULTANT will not perform exhaustive or detailed review of the Contractor's work except when CONSULTANT is the commissioning authority and as expressly written in the commissioning authority's scope of services. CONSULTANT shall not be responsible for Contractor's construction means, methods, sequence, techniques or procedures necessary for performing the work except when CONSULTANT is the commissioning authority and as expressly written in the CONSULTANT'S scope of services as a commissioning authority, nor shall CONSULTANT be responsible for the failure of Contractor to perform the construction in accordance with the Contract Documents or any applicable codes, laws, rules or regulations. The presence of the CONSULTANT at the construction site also shall not relieve the Contractor of its jobsite safety obligations.

CONSULTANT shall not be responsible for the acts or omissions of any Contractor or Subcontractor or any other persons at the site or otherwise performing any of the Contractor's work. However, nothing contained herein shall be construed to

release CONSULTANT from his responsibilities to properly perform duties undertaken by him as a part of this Agreement.

1.6 In providing services under this Agreement, CONSULTANT will endeavor to perform in a manner consistent with that degree of care and skill ordinarily used by members of CONSULTANT'S profession practicing under similar conditions at the same time and in the same locality. CONSULTANT makes no warranties, express or implied, under this Agreement or otherwise, in connection with CONSULTANT'S services. The CONSULTANT will be notified in writing of any alleged errors or omissions. Upon receipt of this notice, CONSULTANT will review the alleged error or omission. If CONSULTANT agrees its services have not met this standard, CONSULTANT will assist in determining corrective action.

1.7 The CLIENT, without invalidating this Agreement, may request a change in the scope of services and CONSULTANT shall issue to CLIENT a proposal setting forth an adjustment to the scope of services, budget, and schedule for the additional services provided by CONSULTANT. Any modification to this Agreement must be in the form of a written Amendment and executed by both CONSULTANT and CLIENT. If the CLIENT elects to reduce CONSULTANT'S scope of services, the CLIENT shall release, hold harmless, defend and indemnify CONSULTANT from any and all claims, damages, losses or costs associated with or arising out of such reduction in services.

1.8. If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the CONSULTANT are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the CONSULTANT may call for renegotiation of appropriate portions of this Agreement unless such circumstances or conditions reasonably should have been known by CONSULTANT under the standards applicable to such professionals under the same or substantially similar circumstances. The CONSULTANT shall notify the CLIENT of the changed conditions necessitating renegotiation, and the CONSULTANT and the CLIENT shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement and/or any task order in accordance with the Termination provision herein.

1.9 If CONSULTANT'S scope of services includes review of submittals or other similar items, CONSULTANT shall review and accept or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The CONSULTANT'S review shall be conducted with reasonable promptness while allowing sufficient time in the CONSULTANT'S judgment to permit adequate review. Review of a specific item shall not indicate that the CONSULTANT has reviewed the entire assembly of which the item is a component. The CONSULTANT shall not be responsible for any deviations from the Construction Documents not brought to the attention of the CONSULTANT in writing by the Contractor. The CONSULTANT shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

SECTION 2 - CLIENT'S RESPONSIBILITIES

2.1 CLIENT shall provide all previous documents relating to any project associated with the task order at issue, all criteria and full information as to CLIENT'S requirements for the task order and shall designate a person with the authority to act on CLIENT'S behalf on all aspects of the Project. CLIENT shall give prompt written notice to CONSULTANT whenever CLIENT observes or otherwise becomes aware of any defect in the work or any error or omission in the services provided by CONSULTANT.

2.2 CLIENT shall also be responsible for the following and pay all costs incident thereto:

1. Provide such legal, accounting and other counseling services as may be required for the task order.
2. Obtain and pay all costs incidental to obtaining permits from governmental authorities having jurisdiction over the work identified in the task order.
3. Obtain and furnish approvals from governmental authorities having jurisdiction over the work identified in the task order.
4. Pay all costs incident to obtaining bids or proposals from Contractor(s).
5. Pay all permit, review and filing fees required by governmental agencies.

2.3 The CLIENT and CONSULTANT acknowledge that changes in design and/or construction of the work identified in the task order may be required for a variety of reasons during the design, permitting and construction phases of the work identified in the task order. As a result, unforeseen changes may cause the final costs of the work identified in the task order to exceed the initial Project cost estimates for construction, commissioning, engineering, permitting, planning, and surveying. The CLIENT agrees to set aside sufficient funds as a contingency reserve to be used, as required, to cover any such increased Project costs.

2.4 CLIENT agrees to provide to CONSULTANT all available information necessary to perform CONSULTANT'S services under this Agreement. The CLIENT shall furnish, at CLIENT'S expense, all available information, requirements, reports, data, surveys, and instructions required. CONSULTANT is entitled to rely on the accuracy and completeness of all such information provided.

2.5 CLIENT shall furnish right-of-way entry onto the project site for CONSULTANT to perform necessary field measurements or studies.

SECTION 3 - PAYMENT TO CONSULTANT

3.1 The CONSULTANT will submit monthly statements requesting payment which shall be based on the amount of services provided and expenses incurred by CONSULTANT during the billing period. Payment is due CONSULTANT upon receipt of statement by CLIENT.

3.2 If CLIENT fails to make any payment due CONSULTANT for services and expenses within thirty (30) days after receipt of CONSULTANT'S statement therefore, the amounts due CONSULTANT shall include an additional charge at the maximum legal rate allowed by law plus reasonable attorney fees, court costs and actual expenses incurred in connection with collection of any past due amount. CONSULTANT may suspend performance of services upon ten (10) calendar days' notice to the CLIENT for failure of payments when due or any other breach of this Agreement. CONSULTANT shall not have any liability whatsoever to the CLIENT for any costs or damages as a result of such suspension. If CONSULTANT resumes services after payment by CLIENT, the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for CONSULTANT to resume performance. If an invoice remains unpaid for more than 90 days, CONSULTANT shall have the right, but not the obligation, to initiate collection procedures. If the CLIENT fails to make payment when due and CONSULTANT incurs any costs in order to collect sums from the CLIENT, the CLIENT agrees that all such collection costs incurred shall immediately become due and payable to CONSULTANT. This obligation of CLIENT to pay CONSULTANT'S collection costs shall survive the term of this Agreement or any termination by either party.

3.3 The type of fee will be specified for each task order and shall conform to one of the following methods of payment:

Method 1 - HOURLY RATES. CLIENT shall pay CONSULTANT at the hourly rates specified on page one of this Agreement or in attachments hereto, for all services rendered by commissioning authorities, engineers, planners, principals, scientists, surveyors, and employees engaged on the project, plus an amount equal to CONSULTANT'S actual reimbursable costs related to the project times a factor to be specified by the task order and this Agreement. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually to reflect equitable changes in the compensation payable to the CONSULTANT.

Method 2 - LUMP SUM. CLIENT shall pay CONSULTANT a lump sum fee for all services furnished by commissioning authorities, engineers, planners, principals, scientists, surveyors, and employees engaged on this project as necessary to complete the basic services described herein. Statements will be submitted based on CONSULTANT'S estimate of work completed during each billing period.

Method 3 - OTHER METHOD. A method to be agreed upon by CLIENT and CONSULTANT and which shall be specified on each task order or in attachments to this Agreement.

3.4 Reimbursable expenses mean the actual expenses incurred by CONSULTANT or CONSULTANT'S associates or consultants in connection with the Project such as expenses for: transportation, subsistence (including items subject to deduction limitations), telephone calls, postage, and reproduction of documents, computer charges, equipment charges and similar project-related items.

3.5 If the CLIENT fails to make payment to CONSULTANT in accordance with this Agreement, this failure shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by CONSULTANT

3.6 Payment of invoices shall not be subject to any discounts or set-offs by the CLIENT unless agreed to in writing by CONSULTANT. Payment to CONSULTANT for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

SECTION 4 – OTHER TERMS AND CONDITIONS

4.1 All documents including reports, drawings, specifications and other deliverables, whether in printed or electronic media format, prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of service of CONSULTANT and CONSULTANT shall be deemed the owner and author of such instruments of service. CONSULTANT shall retain all common law, statutory law and other rights, including, without limitation, all copyrights, in the instruments of service whether or not the work identified in any task order is completed and regardless of whether the information is provided in paper or electronic format. CLIENT may make and retain copies for information and reference in connection with the use and occupancy of the project by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the work identified in any task order or on any other project. CONSULTANT understands and agrees that all items described above are nonetheless public records under the Washington Public Records Act and may be disclosed to the public without restriction or notification to CONSULTANT.

The CLIENT shall not reuse or make any modification to the documents, drawings, data, or electronic files without the prior written consent of CONSULTANT. In the event the CLIENT, or the CLIENT's Contractors, subcontractors, or anyone else for whom the CLIENT is legally responsible, makes any changes to the information provided by CONSULTANT without CONSULTANT'S prior written consent, the CLIENT shall assume full responsibility for the results of such changes and agrees to waive any claim against CONSULTANT and release CONSULTANT from any liability arising directly or indirectly from such changes. In addition, the CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify and hold CONSULTANT harmless from any claim, cause of action, damage, liability or cost, including reasonable attorney's fees and costs of defense, arising from any changes made by anyone other than CONSULTANT or from any reuse of the drawings, data and electronic files without the prior written consent of CONSULTANT.

The CLIENT is aware that differences may exist between the electronic files delivered and any printed hard-copy documents. In the event of a conflict between any signed hard-copy documents by CONSULTANT and electronic files, the signed or sealed hard-copy documents shall govern.

4.2 Since CONSULTANT has no control over the cost of or availability of labor, materials, equipment or services furnished by others, or over the Contractor(s) methods of determining prices, or over competitive bidding or market conditions, CONSULTANT'S opinions of probable costs including Project, Construction, or Energy are made on the basis of CONSULTANT'S experience and qualifications and represent CONSULTANT'S judgment as an experienced and qualified professional CONSULTANT familiar with the construction industry. CONSULTANT cannot and does not warrant or guarantee that proposals, bids or actual costs including Project, Construction or Energy will not vary from opinions of probable cost prepared by CONSULTANT.

4.3 In recognition of the relative risks, rewards and benefits of this Agreement to both the CLIENT and the CONSULTANT, the risks have been allocated such that the CLIENT agrees that CONSULTANT'S total liability to CLIENT for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to work identified in a task order or this Agreement from any cause or causes, shall not exceed an amount equal to the CONSULTANT'S total compensation for the task order or the total amount of \$100,000, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising.

4.4 The CLIENT recognizes that in the course of completing the services under this Agreement, the CONSULTANT may encounter conditions which are beyond the control of the CONSULTANT and thus creating potential for claims and additional costs to the CONSULTANT which are not covered in fees charged earned for services provided. This category includes, but is not limited to the following:

1. Professional services relating to the disposal of hazardous wastes, or the encountering of hazardous wastes during the performance of design and construction of the project.

2. Unknown underground utilities or other man-made underground objects not properly located.
3. Unavoidable contamination of subsurface areas, aquifers, etc. or the disturbance of natural underground resources during the design and construction of the project.
4. Changed codes or standards during the course of the work.
5. Information provided by others which is not accurate or complete.
6. Conditions that may arise and differ significantly from those existing at the beginning of the project.

Should any such condition occur during the performance of this contract, the CLIENT shall waive any claim against the CONSULTANT and agrees to defend, indemnify and hold the CONSULTANT harmless from any claim or liability for injury or loss allegedly arising from the CONSULTANT'S encountering of said conditions other than claims or liability arising from the negligence or willful misconduct of the CONSULTANT. The CLIENT agrees to compensate the CONSULTANT for any time spent and expenses incurred by the CONSULTANT in defense of any such claim with such compensation based upon the CONSULTANT'S prevailing fee schedule and expense reimbursement policy.

4.5 In the event that a dispute should arise relating to the performance of the services to be provided under this Agreement, the CLIENT and CONSULTANT agree that they shall first submit the matter to mediation by a mutually agreed upon mediator. The mediation shall be held in the city where the project is located, unless the parties mutually agree to hold the mediation in another location. The Mediator's fee shall be shared equally by the parties. If the dispute is not resolved by mediation, the matter may then be considered by other methods of dispute resolution.

4.6 If CONSULTANT has reason to believe that the total cost of services to the CLIENT for work under this Agreement shall exceed the budgeted amount, CONSULTANT shall inform CLIENT in writing of such and submit a revised estimated project cost for approval. CLIENT shall not be obligated to reimburse CONSULTANT for costs incurred in excess of the estimated cost set forth in this Agreement and CONSULTANT shall not be obligated to continue performance under the Agreement or to incur costs in excess of the estimated cost set forth in this Agreement unless and until CLIENT has notified CONSULTANT in writing that the amount has been amended and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of services under this Agreement.

4.7 Any litigation or other dispute arising out of or relating to this Agreement shall be governed by the law of the state in which the project is located regardless of conflict of law principles or any other choice of law provision. Unless otherwise precluded by the law of the state in which the project is located, venue and jurisdiction for any dispute shall either be in the state in which the project is located.

4.8 The CONSULTANT shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence the CONSULTANT cannot ascertain.

4.9 (a) If CONSULTANT is performing work on an approved task order, either party may terminate this Agreement and/or the task order only for cause, and only upon 10 calendar days' written notice (from the terminating party to the non-terminating party) for the following reasons:

1. Substantial failure by either party to perform in accordance with this Agreement;
2. Assignment of this Agreement without the written consent of the other party;
3. Suspension of the project or CONSULTANT'S services for more than 60 calendar days, consecutive or aggregate;
4. Material changes in the conditions under which this Agreement was executed, the Scope of Services, the nature of the project, or the failure of the parties to reach an agreement on compensation and/or schedule adjustments necessitated by such changes.

In the event of a termination not the fault of CONSULTANT, the CLIENT shall pay CONSULTANT, in addition to payment for services rendered and reimbursable expenses incurred, all expenses incurred by CONSULTANT in connection with the orderly termination of this Agreement, including, but not limited to, demobilization, reassignment of personnel, associated overhead costs, and all other expenses resulting from the termination.

4.9(b) If CONSULTANT is not performing work on an approved task order, either party may terminate this Agreement upon written notice to the other party. Such termination shall be effective upon delivery of the termination notice. If the notice is mailed via first class United States Postal Service mail, it shall be deemed effective the third day after the post-mark date

noted on the envelope containing the termination notice.

4.10 CLIENT and CONSULTANT each binds himself and his partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CLIENT and CONSULTANT.

4.11 In accordance with the terms of this contract, the CONSULTANT will provide labor and materials for the improvement of the CLIENT's property or property for which the CLIENT acts as agent if necessary to complete an approved task order. The terms of this contract also provide for specific payment terms to the CONSULTANT for services rendered.

4.12 CONSULTANT and CLIENT agree that, without prior consent of the other party, neither will offer employment to or discuss employment with any of the other party's associates or employees until one year after this Agreement is terminated.

4.13 If CONSULTANT mistakenly leaves out of the Construction Documents any component or item required for an approved task order, CONSULTANT shall not be responsible for the cost or expense of constructing or adding the component or item to the extent such item or component would have been required and included in the original construction documents. In no event will the CONSULTANT be responsible for any cost or expense that provides betterment, upgrades or enhances the value of the Project.

4.14 CONSULTANT and CLIENT do not intend for this Agreement to benefit any third-party. No third-party may claim to be a third-party beneficiary of this Agreement.

4.15 Neither party may assign this Agreement without the written consent of the other party. However, CONSULTANT may, where CONSULTANT deems necessary, hire subconsultants to provide services covered by this Agreement.

4.16 Neither the professional activities of CONSULTANT, nor the presence of CONSULTANT at the construction/project site, shall relieve the general Contractor and all subcontractors of any of their responsibilities and duties to perform the work in accordance with the contract documents and to comply with any health or safety precautions required by any regulatory agencies. CONSULTANT does not have authority to control any Contractor or its employees in connection with their work or any health or safety programs or procedures. The CLIENT agrees that the Contractor and subcontractors are solely responsible for job site safety.

4.17 CONSULTANT shall assist the CLIENT in applying for permits and approvals where required by law. In cases where the scope of services requires CONSULTANT to submit, on behalf of the CLIENT, a permit application and/or approval by a third party to this contract, CONSULTANT does not make any warranties, guarantees, or representations as to the success of CONSULTANT'S effort on behalf of the CLIENT. Payment for services rendered by CONSULTANT is not contingent upon the successful acquisition of these permits.

4.18 Notwithstanding any other provision in this Agreement, neither the CLIENT nor CONSULTANT, their respective officers, directors, shareholders, partners, employees, agents, members, subconsultants, or employees shall be liable to the other or shall make any claim for any incidental, indirect, or consequential damages arising out of or in any way connected to the project or this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action.

4.19 This Agreement is the entire agreement between CONSULTANT and CLIENT. It supersedes all prior communications, understandings, and agreements, whether oral or written. Any Amendment or modification to this Agreement must be written and executed by both CONSULTANT and CLIENT.

4.20 If either party initiates litigation in connection with a matter arising of work performed under this Agreement, or for enforcement of any term of this Agreement, then the prevailing party shall be entitled to recover its reasonable attorney fees and costs (including expert witness fees) incurred in connection with the litigation.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CLIENT:

City of Othello _____

Signed: *[Signature]* _____

By: Wade Farris _____

Title: City Administrator _____

Contact Information and Address for giving notices:

Travis Goddard, Community Development Director _____

City of Othello _____

500 E. Main Street, Othello WA 99344 _____

Email: tgoddard@othellowa.gov _____

Phone: 509-331-2700 _____

Address for Invoices (if different)

CONSULTANT:

Morrison-Maierle, Inc. _____

Signed: *[Signature]* _____

By: Nancy Granger Cormier, PE _____

Title: Vice President/Helena Operations Manager _____

Contact Information and Address for giving notices:

Bill White, Senior Transportation Planner _____

Morrison-Maierle, Inc. _____

316 W. Boone Avenue, Suite 360 Spokane WA 99201 _____

Email: bwhite@m-m.net _____

Phone: 509-315-8505 _____