

**RESOLUTION NO. 12/13-20  
CITY OF DAYTON, OREGON**

*Title: A Resolution Awarding a Personal Services Contract for Backflow Testing Services and Authorizing the City Manager to Enter into a Contract with A1 Backflow Services, LLP*

**WHEREAS**, the City Council adopted Ordinance 611 on October 1, 2012 authorizing the City to contract for cross connection backflow prevention device testing to simplify the inspections and testing processes the City currently uses; and

**WHEREAS**, competitive quotes were received for said work as summarized in Exhibit A; and

**WHEREAS**, the lowest responsible bid was received from A1 Backflow Services, LLP;

**The City of Dayton resolves as follows:**

- 1) **THAT** the Personal Services Agreement between the City of Dayton and A1 Backflow Services, LLP (attached hereto as Exhibit B and by this reference made a part hereof) is hereby approved and the City Manager is hereby authorized to execute the agreement; and
  
- 3) **THAT** this resolution shall become effective immediately upon adoption.

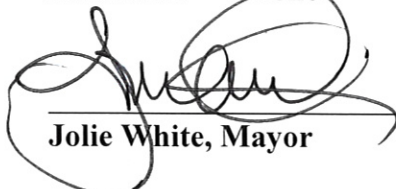
**ADOPTED** this **4th** day of **March, 2013**

**In Favor**      **Bixler, Blackburn, Collins, Frank, Utt, White, Wytoski**

**Opposed**      **None**

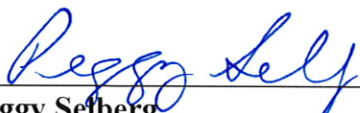
**Absent**      **None**

**Abstained**      **None**

  
\_\_\_\_\_  
**Jolie White, Mayor**

3/25/13  
\_\_\_\_\_  
**Date of Signing**

**ATTESTED BY:**

  
\_\_\_\_\_  
**Peggy Selberg**  
**City Recorder**

3/4/13  
\_\_\_\_\_  
**Date of Enactment**

Attachment - Exhibit A  
                          Exhibit B

Exhibit A

A1 Backflow Services LLP	\$20 per device up to 2 inches
Cascade Water Systems	\$25 per device up to 2 inches \$50 per device 3 inches & up
McMinnville Landscaping & Irrigation	\$23 per unit
Willamette Valley Backflor	\$28 per assembly test – residential \$36-\$60 per assembly test – commercial
WL Johnson Irrigation & Landscaping	\$25 per unit up to 2 inches \$50 per unit over 2 inches
Heath Backflow Inc	\$25 per unit up to 3 inches \$50 per unit over 3 inches
Adams Clearwater	\$33 per unit

**CITY OF DAYTON  
PROFESSIONAL SERVICES CONTRACT**

Exhibit B

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is made and entered into by and between the City of Dayton, a municipal corporation in the State of Oregon ("City") and A1 Backflow Services, LLP ("Consultant") identified as follows:

Company:	A1 Backflow Services, LLP
Federal ID:	
Mailing Address:	PO Box 948
City, State & Zip:	Silverton, OR 97381
Phone #:	(503) 873-9600
Fax #:	(503) 873-4400
E-Mail:	

1. **EFFECTIVE DATE AND DURATION OF CONTRACT.** This Contract shall become effective on March 4, 2013 ("Effective Date"). This Contract shall bind the City when it is authorized or ratified by the City Manager or designee. Unless earlier terminated, this Contract shall remain in full force and effect until City accepts Consultant's completed performance or on March 3, 2014, whichever first occurs.
2. **PROJECT MANAGERS.** City's project manager is Steve Sagmiller. Consultant's project manager is A1 Backflow. Each party shall give the other timely written notification of any change in their respective project manager.
3. **FUNDS AVAILABLE AND AUTHORIZED.** City has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract.
4. **RELATIONSHIP OF THE PARTIES.**
  - 4.1. Professional consultant. The Consultant shall provide the Services for the Project in accordance with the terms and conditions of this Contract. The Consultant's performance of Services shall be as a professional consultant to City to carry out the activities of the Project and to provide the technical documents and supervision to achieve City's Project objectives.
  - 4.2. City oversight/other consultants. In administering this Contract, City may retain the services of an independent project manager, and potentially, other consultants or other contracts for additional or related work as needed to fulfill City's objectives. Consultant shall fully cooperate with such additional contractors and with any City employees concerned with such additional or related work, and shall coordinate the performance of work under this Contract, with such additional or related work. Consultant shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by any City employee.
  - 4.3. Written consent for sub-contracts, assignment, successors-in-interest. Consultant shall not make any sub-contract with any other party for furnishing any of the Project's Services or assign or transfer any interest in this Contract, without obtaining the express prior written consent of City. In any case, this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any. Should sub-contracts be allowed, the Consultant shall provide a list of all Sub-contractors which the Consultant intends to utilize on the Project. This list shall include such information on the qualifications of the Sub-contractors as may be requested by City. City reserves the right to review the Sub-contractors proposed, and the Consultant shall not retain a Sub-contractors to which City has a reasonable objection.
5. **SCOPE OF WORK.** The Consultant shall provide to the City all services related to completion of the project (the "Project") as more particularly described in Consultant's proposal ("Proposal"), attached to this Contract as Exhibit 1 and incorporated herein by reference. In the event of inconsistencies between this Contract and Exhibit 1, the provisions of this Contract shall control. Generally, the services to be performed by the Consultant on the Project consist of the following and as more specifically described in Exhibit 1 (the "Services"):

## LIST SERVICES

Consultant agrees that the Services are to ensure there are no false failure reports for the backflow devices to be tested and that the Consultant will not perform any repairs beyond what is necessary to properly test the devices, instead all failures should be reported promptly to the City.

Consultant is required to obtain all necessary licenses (state and local) necessary to operate its business in the City and to perform the Services.

6. **PAYMENT.** City agrees to pay Consultant the rate of \$20 per backflow test in a sum not to exceed five thousand dollars (\$5,000.00) for satisfactory completion of the Project.
  - 6.1 Consultant shall submit monthly billings for work performed. The billings shall describe all materials supplied and work performed with particularity and shall itemize and explain all expenses for which reimbursement is claimed. Unless the amount and rate of reimbursement are specified in an attached exhibit to this Contract, the City will not reimburse Consultant for any expenses under this Contract.
  - 6.2 City shall pay Consultant for the amount billed each month within 30 (thirty) days after receiving Consultant's billing in a format acceptable to the City. City shall not pay any amount in excess of the compensation amounts set forth above nor shall City pay Consultant any fees or costs which City reasonably disputes. If such a dispute arises, Consultant will continue to perform its duties under this Contract.
7. **CONTRACT PERFORMANCE.** Consultant shall at all times perform the Services diligently, without delay and punctually fulfill all requirements herein, consistent with the schedule for the performance of Consultant's services set forth in Exhibit 1. Expiration of this Contract shall not extinguish or prejudice City's right to enforce this Contract with respect to any breach of a warranty of Consultant or any default or defect in performance that has not been cured. Time is of the essence in the performance of this Contract.
8. **CHANGES.** This Contract, including all exhibits attached hereto, shall not be waived, altered, modified, supplemented, extended or amended, in any manner whatsoever, except by written instrument, executed by both parties. Such waiver, alteration, modification, supplement, extension or amendment, if made, shall be effective only in the specific instance and for the specific purpose given. The parties acknowledge and agree that, to the extent permitted by law, this Contract may be amended to specifically provide for additional Consultant services that are within or directly related to the Project. Failure of Consultant to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work.
9. **EXECUTION AND COUNTERPARTS.** This Contract, and any amendments to this Contract, may be executed in counterparts (each of which shall be an original and all of which shall constitute one and the same instrument) or in multiple originals. A faxed form of this Contract or any amendment thereto, executed by one or more of the parties, will constitute a counterpart hereof, as long as the counterpart bearing the party's original signature is transmitted to the other party and received by that party forthwith.
10. **DUTY TO INFORM.** Consultant shall give prompt written notice to City's Project Manager if, at any time during the performance of this Contract, Consultant becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Consultant shall constitute neither agreement with nor acquiescence in Consultant's statement or claim and shall not constitute a waiver of any of City's rights.
11. **NOTICE.** Except as otherwise expressly provided in this Contract, any communications between the parties or notices to be given hereunder shall be given in writing by personal delivery, facsimile or mailing, postage prepaid, to Consultant or City at the address or number set forth on this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given 5 (five) calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed to be given when the transmitting machine generates a transmission receipt. To be effective against City, such facsimile transmission must be confirmed by telephone notice to the



City's Project Manager identified in this Contract, and shall not be deemed to be given until such confirmation is completed. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

12. **CONFLICT OF INTEREST.** Except with City's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.
13. **NO THIRD-PARTY BENEFICIARIES.** City and Consultant are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
14. **PROJECT INFORMATION & CONFIDENTIALITY.** Consultant agrees to share all Project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the Project. No reports, information or data given to or prepared or assembled by Consultant under the Contract shall be made available or used for anything other than the work set forth under the Contract by Consultant to any individual or organization (except City) without the prior written approval of City which approval is in the City's sole and absolute discretion.
15. **RECORDKEEPING.** Consultant and Sub-contractors shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Consultant and Sub-contractors shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Consultant's and Sub-contractors' performance hereunder. All such fiscal records, books, documents, papers, plans, and writings shall be retained by Consultant and Sub-contractors and kept accessible for a minimum of 6 (six) years after the Contract's expiration, except as required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. If for any reason, any part of this Contract, any Project-related consultant contract or any Project-related construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than 6 (six) years or until all litigation is resolved, whichever is longer. Consultant shall provide City with full access to these records in preparation for and during litigation.
16. **ACCESS TO RECORDS.** Consultant agrees that City and its authorized representatives shall have access to all books, documents, papers and records of the Consultant which are directly related to the Contract for the purpose of making any audit, examination, copies, excerpts and transcripts.
17. **INDEPENDENT CONTRACTOR STATUS.** Consultant shall be free from City's direction and control over the means and manner of providing Project labor or service, subject only to the specifications of the desired results. Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law. Consultant shall furnish the tools or equipment necessary for the contracted labor or services. Consultant agrees and certifies that:
  - 17.1 Consultant is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under this Contract.
  - 17.2 Consultant is not eligible for any federal social security, unemployment insurance, pension, state retirement system or workers' compensation benefits from compensation or payments paid to Consultant under this Contract.
  - 17.3 Consultant has filed federal and state income tax returns in the name of the business as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.
  - 17.4 Consultant is not an employee of Metro, any special district, or local government, including City, the federal government or the State of Oregon.

**18. PAYMENT OF LABORERS; PAYMENT OF TAXES.**

**18.1** Consultant shall:

- 18.1.1** Make payment promptly, as due, to all persons supplying to the Consultant labor and material for the performance of the work provided for in the Contract (ORS 279B.220(1));
- 18.1.2** Pay all contributions or amounts due to the Industrial Accident Fund incurred in the performance of this Contract, and shall ensure that all Sub-contractors pay amounts due from their performance (ORS 279B.220(2));
- 18.1.3** Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished (ORS 279B.220(3)); and
- 18.1.4** Be responsible for all federal, state and local taxes applicable to any compensation or payments paid to the Consultant under this Contract and pay to the Department of Revenue all sums withheld from employees under ORS 316.167. Unless the Consultant is subject to backup withholding, the City will not withhold from such compensation or payments any amount(s) to cover the Consultant's federal or state tax obligation (ORS 279B.220(4)).

**18.2** The Consultant shall promptly as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Consultant, of all sums that the Consultant agrees to pay for the services and all moneys and sums that the Consultant collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the service (ORS 279B.230(1)).

**18.3** Consultant, its subcontractors and all employers, if any, providing services, labor or materials under the Contract are subject to Oregon Workers' Compensation Law, which requires all subject employers working under this Contract are either employers that will comply with ORS 656.017 or are employers that are exempt under ORS 656.126. Consultant shall ensure that each of its subcontractors, if any, complies with these requirements (ORS 279B.230(2)).

**19. COMPLIANCE WITH APPLICABLE LAW.** Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Services under the Contract.

**19.1** Without limiting the generality of the foregoing, Consultant expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract and incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated:

**19.1.1** Titles VI and VII of the Civil Rights Act of 1964, as amended;

**19.1.2** Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;

**19.1.3** the Americans with Disabilities Act of 1990, as amended;

**19.1.4** Executive Order 11246, as amended;

**19.1.5** the Health Insurance Portability and Accountability Act of 1996;

**19.1.6** the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;

**19.1.7** the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;

**19.1.8** ORS Chapter 659, as amended;

**19.1.9** all regulations and administrative rules established pursuant to the foregoing laws; and

**19.1.10** all other applicable requirements of federal, state and municipal civil rights and rehabilitation statutes, rules and regulations.

**19.2** City's performance under the Contract is conditioned upon Consultant's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 which are incorporated by reference herein.

**19.3** Any person employed on work under this Contract shall be paid at least time and a half for all overtime worked in excess of 40 (forty) hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime (ORS 279B.235(3)).

## **20. REPRESENTATIONS AND WARRANTIES.**

**20.1** Consultant represents and warrants to City that:

**20.1.1** Consultant has complied and will continue to comply with all Oregon laws relating to the performance of Consultant's obligations under this Contract;

**20.1.2** Consultant shall be qualified, professionally competent and duly licensed to perform the Services at all times during the term of this Contract;

**20.1.3** Consultant has the skill and knowledge possessed by well-informed members of its industry, trade or profession and will apply that skill and knowledge with care and diligence to perform the Project under this Contract in a professional manner and in accordance with standards prevalent in Consultant's industry, trade or profession;

**20.1.4** Consultant has the power and authority to enter into and perform this Contract;

**20.1.5** When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms;

**20.1.6** The persons executing this Contract on behalf of the Consultant have the actual authority to bind the Consultant to the terms and conditions of this Contract;

**20.1.7** Consultant prepared its Proposal, Exhibit 1 to this Contract, independently from all other proposers, and without collusion, fraud or other dishonesty; and

**20.1.8** The provisions of this Contract do not conflict with, or result in a default under, any agreement or other instrument binding upon the Consultant and do not result in a violation of any law, regulation, court decree or order applicable to the Consultant.

**20.2** Upon City's request, Consultant shall provide City with evidence reasonably satisfactory to City confirming the foregoing covenants and warranties. The warranties set forth in this paragraph are in addition to, and not in lieu of, any other provided warranties.

**21. INSURANCE.** Consultant shall obtain prior to beginning any work under this Contract and shall maintain in full force and effect for the term of this Contract or any other time periods required herein, at Consultant's expense, an occurrence form comprehensive general liability and automobile insurance policies for bodily injury, including death, and broad form property damage, including loss of property and coverage for owned, hired or non-owned vehicles, as applicable, for the protection of Consultant and the City, its elected and appointed officials, officers, agents, employees and volunteers as additional insureds. The policies shall be primary policies and any other insurance carried by City shall be excess. The policies shall be issued by a company authorized to do business in

the State of Oregon and providing single limit general liability coverage of \$1,000,000 and separate automobile coverage of \$1,000,000. The certificates shall provide that City will receive 30 (thirty) days' written notice of cancellation or material modification of the insurance contract to the City Project Manager. Consultant shall provide certificates of insurance and additional insured endorsements to City evidencing the date, amount, and type of insurance prior to commencement of any work under this Contract. If requested, complete copies of insurance policies shall be provided to City. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

**21.1 WORKERS' COMPENSATION COVERAGE.** Consultant certifies that Consultant has qualified for State of Oregon Workers' Compensation coverage for all Consultant's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier insured employer as provided by ORS 656.407 or as a self-insured employer. Consultant shall provide to City within 10 (ten) days after Contract Effective Date, a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without 30 (thirty) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Consultant is self-insured.

- 22. INDEMNIFICATION.** Consultant shall indemnify, defend, save and hold harmless City, its elected and appointed officials, officers, agents, employees and volunteers against all liability, claims, suits or actions of whatsoever nature, loss or expenses, including attorney fees, based upon or arising out of the acts or omissions of the Consultant or its Sub-contractors, agents, or employees under this Contract except that arising out of the sole negligence of the City. In addition, Consultant expressly agrees to indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents, employees and volunteers against all liability, claims, suits, actions, loss or expenses, including attorney fees, arising out of or related to any claims that the Project, Services, or any other tangible or intangible items delivered to City by Consultant that may be the subject of protection under any state of 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.
- 23. BREACH OF CONTRACT.** Consultant shall remedy any breach of this Contract within the shortest reasonable time after Consultant first has actual notice of the breach or City notifies Consultant of the breach, whichever is earlier. If Consultant fails to remedy a breach in accordance with this Section, City may terminate that part of the Contract affected by the breach upon written notice to Consultant, may obtain substitute services in reasonable manner, and may recover from Consultant the amount by which the price for those substitute services exceeds the price for the same services under this Contract.
- 23.1.** If the City determines that the breach is material and Consultant fails to remedy the breach in accordance with this Section, City may declare Consultant in default and pursue any remedy available for a default.
- 23.2.** Pending a decision to terminate all or part of this Contract, City unilaterally may order Consultant to suspend all or part of the services under this Contract. If City terminates all or part of the Contract pursuant to this Section, Consultant shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Contract and later orders Consultant to resume those services, Consultant shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
- 23.3** To recover amounts due under this Section, City may withhold from any amounts owed by City to Consultant, including but not limited to amounts owed under this or any other contract between Consultant and City.
- 24. FORCE MAJEURE.** Neither City nor Consultant shall be held responsible for delay or default caused by fire, riot, acts of nature, or war where such cause was beyond, respectively, City's or Consultant's reasonable control. Consultant 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 Contract.
- 25. WAIVER.** The failure of City to enforce any provision of this Contract shall not constitute a waiver by City of that or any other provision.



26. **DEFAULT.** City, by written notice of default (including breach of contract) to Consultant, may terminate the whole or any part of the Contract:
- 26.1 If Consultant fails to provide Services called for this Contract within the time or manner specified herein, or any extensions thereof; or
  - 26.2 If Consultant fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such longer period as City may authorize in writing.
27. **TERMINATION.**
- 27.1 This Contract may be terminated at any time by written mutual consent of both parties.
  - 27.2 Consultant may terminate this Contract upon 30 (thirty) days' written notice to City if City fails to pay Consultant pursuant to the terms of this Contract and City fails to cure within 30 (thirty) days after receipt of Consultant's notice or such longer period of cure as Consultant may specify in such notice.
  - 27.3 City, in its sole discretion, may terminate this Contract, in whole or in part, at any time upon written notice to Consultant by specifying the termination date of the Contract.
  - 27.4 In the event of termination under this Section, Consultant's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by City plus Consultant's reasonable Contract close-out costs, less previous amounts paid and any claim or claims which the City has against Consultant. If previous amounts paid to Consultant exceed the amount due to Consultant under this Section, Consultant shall pay any excess to City upon demand. Within 30 (thirty) days after termination, Consultant shall submit an itemized invoice for all unreimbursed Services completed before termination and all Contract close-out costs actually incurred by Consultant. City shall not be obligated to pay for any such costs invoiced to and received by City later than 30 (thirty) days after termination.
  - 27.5 Upon receiving a notice of termination, Consultant shall immediately cease all activities under this Contract, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, As directed by City, Consultant shall deliver to City all Contract documents, information, works-in-progress and other property that are or would be deliverable had the Contract been completed. Upon City's request, Consultant shall surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Project or Services. By Consultant's signature on this Contract, Consultant allows City to use said Work Product and other property for its intended use. The rights and remedies of City provided in this Section related to defaults by the Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
28. **GOVERNING LAW; JURISDICTION; VENUE.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "the claim") between City and Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon. If the 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, Portland Division. Consultant, by its execution of this Contract, hereby consents to the *in personam* jurisdiction of said courts.
29. **MEDIATION; TRIAL WITHOUT A JURY.** Should any Contract related dispute arise between the Parties it is agreed that such dispute will be submitted to a mediator prior to any litigation and the Parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, then through litigation. Any litigation arising under or as a result of this Contract shall be tried to the court, without a jury.
- 29.1 The Parties shall exercise good faith efforts to select a mediator who shall be compensated equally by the Parties. Mediation will be conducted in Portland, Oregon, unless the Parties agree in writing otherwise. Parties agree to exercise good faith efforts to resolve all Contract related disputes through the mediation

process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the Parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon the request of either party. The Parties shall retain all rights with respect to any dispute not covered by this Section.

30. **ATTORNEY FEES.** If a suit or action is filed to enforce any of the terms of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney fees.
31. **SEVERABILITY.** Parties agree that if any term or provision of this Contract 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 Contract did not contain the particular term or provision held to be invalid.
32. **MERGER CLAUSE; CONTRACTOR CERTIFICATION.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED HEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THIS CONTRACT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED HEREIN. CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT THE SUPPLIED CONTRACTOR DATA IS TRUE AND ACCURATE AND CONSULTANT HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signed this 18<sup>th</sup> day of March, 20013.

FOR THE CONSULTANT:

Trevor D. Kertson  
Signature

Trevor D. Kertson  
Name (Printed)

A1 Backflow Sucs, LLP  
Company

\_\_\_\_\_  
Federal ID #

Partner  
Title

P.O. Box 948  
Mailing Address

Silverton, OR 97381  
City, State, Zip

503-873-9600  
Phone Number

503-873-4400  
Fax Number

oregonbackflowservices@gmail.com  
E-mail

FOR THE CITY:

Scott Rigel  
City Manager

\_\_\_\_\_  
Mailing Address

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

EXHIBIT 1  
CONTRACT FOR Services  
PROJECT: BACKFLOW TESTING

WORK SPECIFICATIONS:

Contractor agrees to provide the following:

- Supply all labor for the testing of the devices
- Repair any devices to bring them into compliance
- The provisions of ORS 279C for public contracting apply to this contract.
- All work shall be completed on or before April 30 of the calendar year.
- Contractor certifies that it has not been debarred or suspended from work on any public works contracts and that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- Certificate of liability and workers compensation insurance shall be provided to the City naming the City of Dayton as an additional insured prior to the start of the work.
- Contractors name, address, phone number, email address
- Current and Valid State of Oregon Construction Contractor's Board License Number
- Evidence of current and valid Oregon Backflow Assembly Tester Certificate
- This is an annual contract and will be extended or terminated at the will of the City.

Agreed:

March 18<sup>th</sup>, 2013  
Date

Joseph D. Johnston  
Contractor