

EXHIBIT "A"

SAMPLE PERSONAL SERVICES CONTRACT BETWEEN HOOD RIVER COUNTY AND **CONTRACTOR NAME**

This contract is between Hood River County ("County") and **Contractor's Name** ("Contractor"). County's supervising representative for this contract is the County Administrator or the Administrator's designee as noted in Paragraph 21, Notices. County and Contractor agree to the following:

1. Effective Date and Duration. This contract shall become effective on the date it has been signed by every party and when required, approved by the Hood River County Board of Commissioners. Unless extended or earlier terminated, this contract shall expire when County has accepted Contractor's completed performance or on **date**, whichever date occurs last. However, expiration or termination shall not extinguish or prejudice County's right to enforce this contract with respect to: (a) any breach of Contractor warranty or indemnity; or (b) any default or defect in Contractor performance that has not been cured.

2. Statement of Work. Contractor shall perform the work ("Work") as set forth in the Statement of Work and these terms and conditions. The Statement of Work, including the delivery schedule for the Work, is contained in the attached Exhibit A.

3. Consideration.

(a) Work shall be performed on an hourly basis and payment based on the hourly rates contained in Exhibit A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$ **00,000.00**. County will not pay Contractor any amount in excess of the not-to-exceed compensation for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

(b) All interim payments to Contractor shall be made only in accordance with the terms and conditions of this contract. Unless another schedule is stated in Exhibit A, the Statement of Work, Contractor shall submit monthly invoices to County for Work performed.

(c) Invoices shall describe all Work performed with particularity and by whom it was performed and shall itemize and explain all expenses that this Contract requires County to pay and for which Contractor claims reimbursement. Each invoice also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor will specifically note in the appropriate invoice when it has requested payment for one-third and two-thirds of the maximum, not-to-exceed compensation. Contractor shall send invoices to the person designated in Paragraph 21, Notices.

4. Travel and Other Expenses. Travel and other expenses of the Contractor shall not be reimbursed by the County.

5. Independent Contractor; Responsibility for Taxes and Withholding; Retirement System Status.

(a) Contractor shall perform all Work required by this contract as an independent contractor. Although the County reserves the right (i) to determine (and modify) the delivery schedule for the Work and (ii) to evaluate the quality of the completed performance, the County cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the Work.

(b) The Contractor represents and warrants that Contractor (i) is not an employee of Hood River County, (ii) is not currently employed by the Federal Government, and (iii) meets the specific independent

contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as Exhibit B and by this reference made a part hereof. Contractor is not an “officer,” “employee” or “agent” of the County, as those terms are used in ORS 30.265.

(c) Contractor is not a contributing member of the Public Employees Retirement System and Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this contract and, unless Contractor is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Contractor’s federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers’ compensation benefits from compensation or payments paid to Contractor under this contract, except as a self-employed individual.

6. Subcontracts and Assignment; Successors in Interest. Contractor shall not enter into any subcontracts for any of the Work, and shall not assign, delegate or transfer any of its rights or obligations under this Contract without County’s prior written consent. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors, subcontractors and assigns, if any.

7. No Third Party Beneficiaries. County and Contractor 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 not held by or made generally available to the public, whether directly, 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.

8. Funds Available and Authorized. County has sufficient funds currently available and authorized for expenditure to finance the costs of this contract within the County’s current annual budget. Contractor understands and agrees that County’s payment of amounts under this contract attributable to work performed is contingent on County budgetary limitations and other expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to make payments under this contract. County may terminate this contract without penalty or liability to County, effective upon the delivery of written notice to Contractor, with no further liability if County determines that there are insufficient funds available to make payments under this contract.

9. Representations and Warranties. Contractor represents and warrants to County that (a) Contractor has the power and authority to enter into and perform this Contract, (b) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (c) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor’s industry, trade or profession, and (d) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

10. Default; Remedies; Termination.

(a) **Default by Contractor.** Contractor shall be in default under this Contract if:

- (i) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- (ii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after County’s notice or such longer period as County may specify in such notice; or
- (iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified

herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after County's notice, or such longer period as County may specify in such notice.

(b) **County's Remedies for Contractor's Default.** In the event Contractor is in default under Section 10.a, County may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- (i) termination of this Contract under Section 10e(ii);
- (ii) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
- (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
- (iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections 10a, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 10e(i).

(c) **Default by County.** County shall be in default under this Contract if:

- (i) County fails to pay Contractor any amount pursuant to the terms of this Contract, and County fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
- (ii) County commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

(d) **Contractor's Remedies for County's Default.** In the event County terminates the Contract under Section 10e(i), or in the event County is in default under Section 10c and whether or not Contractor elects to exercise its right to terminate the Contract under Section 10e(iii), Contractor's sole monetary remedy shall be (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred, and (b) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by County, less previous amounts paid and any claim(s) that County has against Contractor. In no event shall County be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 10d, Contractor shall pay immediately any excess to County upon written demand.

(e) **Termination.**

(i) **County's Right to Terminate at its Discretion.** At its sole discretion, County may terminate this Contract:

- (A) For its convenience upon thirty (30) days' prior written notice by County to Contractor;
- (B) Immediately upon written notice if County fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or
- (C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the County's purchase of the Work or Work Products under this Contract is prohibited or County is prohibited from paying for such Work or Work Products from the planned funding source.

(ii) **County's Right to Terminate for Cause.** In addition to any other rights and remedies County may have under this Contract, County may terminate this Contract immediately upon written notice

by County to Contractor, or at such later date as County may establish in such notice, or upon expiration of the time period and with such notice as provided in Section 10e(ii)(B) and 10e(ii)(C) below, upon the occurrence of any of the following events:

(A) Contractor is in default under Section 10a(i) because Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;

(B) Contractor is in default under Section 10a(ii) because Contractor no longer holds a license or certificate that is required for it to perform services under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after County's notice or such longer period as County may specify in such notice; or

(C) Contractor is in default under Section 10a(iii) because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after County's notice, or such longer period as County may specify in such notice.

(iii) **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract with such written notice to County as provided in Sections 10e(iii)(A) and 10e(iii)(B) below, or at such later date as Contractor may establish in such notice, upon the occurrence of the following events:

(A) County is in default under Section 10c(i) because County fails to pay Contractor any amount pursuant to the terms of this Contract, and County fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or

(B) County is in default under Section 10c(ii) because County commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and County fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

(iv) **Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to County all of County's property (including without limitation any Work or Work Products for which County has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such County property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

11. Records Maintenance; Access. Contractor shall maintain all financial records relating to this contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that County and their duly authorized representative shall have access to such financial records and to all other books, documents, papers, plans and writings of Contractor that are pertinent to this contract for the purpose of performing examinations and audits, and making excerpts and transcripts. All such financial records, books, documents, papers, plans, and writings shall be retained by Contractor and kept accessible for a minimum of 6 years, 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.

12. Compliance with Applicable Law. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and

executive orders to the extent they are applicable to the Contract: (a) Titles VI and VII of the Civil Rights Act of 1964, as amended; (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (c) the Americans with Disabilities Act of 1990, as amended; (d) Executive Order 11246, as amended; (e) the Health Insurance Portability and Accountability Act of 1996; (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (h) ORS Chapter 659, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. County's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein.

13. Foreign Contractor. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this contract.

14. Governing Law; Jurisdiction; Venue. This contract shall be governed and construed in accordance with the laws of Hood River County and the State of Oregon without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit or proceeding (collectively, "claim") between the County and the Contractor that arises from or relates to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Hood River County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively with the United States District Court for the District of Oregon. Contractor by the signature below of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts.

15. Indemnity. Contractor shall defend (with legal counsel of County's choice), save, hold harmless, and indemnify the Hood River County its officers, employees, agents, and members, from all claims, suits, losses, damages, liabilities, costs, expenses or actions, of any nature whatsoever resulting from, arising out of or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this contract.

16. Insurance. Contractor shall provide insurance as indicated on Exhibit C, attached hereto and incorporated by this reference.

17. Ownership of Work Product.

(a) **Definitions.** As used in this Section 17, and elsewhere in this Contract, the following terms have the meanings set forth below:

(i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Work.

(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than County or Contractor.

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to County pursuant to the Work.

(b) **Original Works.** All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of County. County and Contractor agree that such original works of authorship are "work made for hire" of which County is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work

is not “work made for hire,” Contractor hereby irrevocably assigns to County any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon County’s reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in County. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on County’s behalf.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the County’s behalf and in the name of the County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on County’s behalf.

(c) **Contractor Intellectual Property.** In the event that Work Product is Contractor Intellectual Property Contractor hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on County’s behalf.

(d) **Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the County’s behalf and in the name of the County, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on County’s behalf.

18. Severability. If any term or provision of this Agreement is declared 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 Agreement did not contain the particular term or provision held to be invalid.

19. Waiver. The failure of the County to enforce any provision of this contract shall not constitute a waiver by the County of that or any other provision.

20. Amendments. County may amend this Contract to the extent permitted by applicable statutes, administrative rule, and as provided in the solicitation documents, if any. The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written instrument signed by the parties.

21. Notices. All notices to the respective parties shall either be personally delivered or sent certified mail to the following addresses:

Hood River County Community Development
Eric Walker, Director
601 State Street
Hood River, OR 97031

Contractor’s Contact Name
Contractor’s Name
Address
City, State, Zip

22. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except those rights and obligations set forth in Sections 1, 7, 8, 9, 10, 11, 14, 15, 16, 17, 19, 22, 24 and 25.

23. Time is of the Essence. Contractor agrees that time is of the essence under this Contract.

24. Force Majeure. Neither County nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of County or Contractor, respectively. Contractor 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. Attorney Fees. In the event of a dispute between Contractor and County, each shall pay his or her own attorney fees. Attorney fees are not recoverable from the other party.

26. Contractor Certification. Contractor, by execution of this Contract, acknowledges that s/he has read this Contract, understands it, and agrees to be bound by its terms and conditions. Contractor shall complete the full certification attached and incorporated as Exhibit B.

IT IS SO AGREED:

Jeff Hecksel
County Administrator
Hood River County

Date

Contractor's Name
Title

Date

EXHIBIT A
STATEMENT OF WORK

Exhibit B

CONTRACTOR DATA AND CERTIFICATION

Name (tax filing): _____

Address: _____

Citizenship, if applicable: Non-resident alien

Yes No

Business Designation (check one):

Corporation

Partnership

Federal Tax ID#: _____

Sole Proprietorship

Governmental/Non-Profit Federal Tax ID# ____ - ____
or SSN#: ____ - ____ - ____

Above payment information must be provided prior to contract approval. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers). Information not matching IRS records could subject contractor to 31 percent backup withholding.

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws named in ORS 305.380(4), including without limitation the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue, including the Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan District Self-Employment Tax; (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the supplied Contractor data is true and accurate.

Contractor Name

Date

Title

Exhibit C
INSURANCE

During the term of this contract Contractor shall maintain in force at Contractor's own expense, each insurance noted below:

1. Workers Compensation Insurance is required for Contractors that employ subject workers, as defined in ORS 656.027. All those Contractors shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

2. Professional Liability Insurance:

_____ is not required.

_____ is required with a combined single limit or the equivalent, of not less than:

_____ \$200,000 _____ \$500,000 _____ \$1,000,000 _____ \$2,000,000

for each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the services to be provided under this contract.

3. General Liability Insurance:

_____ is not required.

_____ is required with a combined single limit or the equivalent, of not less than:

_____ \$200,000 _____ \$500,000 _____ \$1,000,000 _____ \$2,000,000

for each claim, incident or occurrence.

4. Automobile Liability Insurance:

_____ is not required.

_____ is required with a combined single limit or the equivalent, of not less than:

_____ Oregon Financial Responsibility Law (ORS 806.070)
_____ \$200,000
_____ \$500,000
_____ \$1,000,000

each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5. 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 30 days written notice from the Contractor or its insurer(s) to County.

6. Certificates of insurance. As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to County within 30 days of signing this contract. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to County acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.