

BENTON COUNTY

PERSONAL SERVICES CONTRACT

This is an agreement by and between BENTON COUNTY, OREGON, a political subdivision of the State of Oregon, hereinafter called COUNTY, and _____, hereinafter called CONTRACTOR.

WHEREAS, COUNTY has need for the services of an individual with the particular training, ability, knowledge, and experience possessed by CONTRACTOR,

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree as follows:

1. TERM OF CONTRACT: This contract shall become effective upon signature, and shall terminate on _____, 20__.
2. SERVICES TO BE PROVIDED: (description of services)
3. PAYMENT: (\$_____ per hour, not to exceed \$_____.) or (\$_____, to be paid upon completion of the services contemplated by this contract.)
4. ASSIGNMENT/DELEGATION: Neither party shall assign, subcontract or transfer any interest in or duty under this agreement without the prior written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented.
5. STATUS OF CONTRACTOR: The parties intend that CONTRACTOR, in performing the services specified in this agreement, shall act as an independent contractor. Although COUNTY reserves the right to (i) determine and modify the delivery schedule for work to be performed and (ii) evaluate the quality of the completed performance, only CONTRACTOR shall have the control of the work and the manner in which it is performed. CONTRACTOR is not to be considered an agent or employee of the COUNTY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits COUNTY provides its employees.

CONTRACTOR will not be eligible for any federal social security, state workers' compensation, unemployment insurance, or Public Employees Retirement System benefits from amounts paid under this contract, except as a self-employed individual.

If this payment is to be charged against Federal funds, CONTRACTOR certifies that it is not currently employed by the Federal government and the

amount charged does not exceed its normal charge for the type of service provided.

COUNTY will report the total amount of all payments to CONTRACTOR, including any expenses, in accordance with Federal Internal Revenue Service and State of Oregon Department of Revenue regulations. CONTRACTOR shall be responsible for any Federal or State taxes applicable to amounts paid under this contract.

6. **WARRANTY:** COUNTY has relied upon representations by CONTRACTOR regarding its professional ability and training as a material inducement to enter into this contract. CONTRACTOR represents and warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of CONTRACTOR's work by COUNTY shall not operate as a waiver or release of such warranty.

7. **INDEMNIFICATION.** CONTRACTOR shall hold harmless, indemnify, and defend COUNTY, its officers, agents, and employees from any and all liability, actions, claims, losses, damages or other costs including attorney's fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the COUNTY and its employees. Such indemnification shall also cover claims brought against COUNTY under state or federal workers' compensation laws. If any aspect of this indemnity or the above warranty shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification or the above warranty.

8. **INSURANCE:** CONTRACTOR and any subcontractors shall maintain insurance acceptable to the COUNTY as provided in Attachment A. Such insurance shall remain in full force and effect throughout the term of this contract.

If CONTRACTOR employs one or more workers as defined in ORS 656.027 and such workers are subject to the provisions of ORS Chapter 656, CONTRACTOR shall maintain currently valid workers' compensation insurance covering all such workers during the entire period of this contract.

9. **METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS:** All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

COUNTY: Benton County Public Works
360 SW Avery Avenue
Corvallis, OR 97333

CONTRACTOR:

and when so addressed, shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given by giving notice pursuant to this paragraph.

10. **TERMINATION:** At any time, with or without cause, COUNTY, in its sole discretion shall have the absolute right to terminate this agreement by giving written notice to CONTRACTOR. If COUNTY terminates pursuant to this paragraph, CONTRACTOR shall be entitled to payment for all services satisfactorily rendered and expenses incurred through the date of termination; provided, that there shall be deducted from such payment the amount of damage, if any, sustained by COUNTY due to any breach of the agreement by CONTRACTOR.

11. **OWNERSHIP OF WORK PRODUCT:** COUNTY shall be the owner of and shall be entitled to possession of all work products of CONTRACTOR that result from this contract ("the work products"). In addition, if any of the work products contain intellectual property of CONTRACTOR that is or could be protected by federal law, CONTRACTOR hereby grants COUNTY a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use all such work products, including but not limited to databases, templates, file formats, scripts, links, procedures, materials, training manuals and other information, designs, plans or works provided or delivered to COUNTY or produced by CONTRACTOR under this contract.

12. **NONDISCRIMINATION:** CONTRACTOR shall comply with all applicable federal, state and local laws, rules, and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability, sexual orientation, gender identity or source of income.

13. **STATUTORY AND REGULATORY COMPLIANCE:** CONTRACTOR shall comply with all federal, state and local laws, ordinances and regulations applicable to the work under this contract, including, without limitation, the applicable provisions of ORS chapters 279A, B and C, particularly 279C.500, 279C.510, 279C.515, 279C.520 and 279C.530, as amended. In addition,

CONTRACTOR expressly agrees to comply with Title VI of the CIVIL RIGHTS ACT of 1964 and comparable state and local laws. CONTRACTOR shall also comply with Section V of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (Pub. Law No. 101-336), ORS 659A.142, ORS 659A.145, ORS 659A.400 to ORS 659A.406 and all regulations and administrative rules established pursuant to those laws. Contractor certifies that it is not disqualified or debarred from entering into this contract under ORS 279B.130, 279C.440 and/or any applicable Federal compliance requirements in accordance with 2 CFR part 180.

14. EXTRA (CHANGED) WORK: Only the Public Works Department Director or his/her designee may authorize extra (and/or changed) work. Failure of the CONTRACTOR to secure Director authorization for extra work shall constitute a waiver of any and all right to adjustment in the contract price or contract time due to such unauthorized extra work and the CONTRACTOR thereafter shall be entitled to no compensation whatsoever for the performance of such work.

CONTRACTOR further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed by CONTRACTOR without the express and prior written authorization of the Director.

15. CONFLICT OF INTEREST: CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. The CONTRACTOR further covenants that in the performance of this contract it shall not employ any person having any such interest.

16. AUDIT: CONTRACTOR shall maintain records to assure conformance with the terms and conditions of this agreement, and to assure adequate performance and accurate expenditures within the contract period. CONTRACTOR agrees to permit Benton County, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this agreement to assure the accurate expenditure of funds. CONTRACTOR shall notify COUNTY of any independent audit report of CONTRACTOR'S activities or finances prepared for CONTRACTOR and agrees to submit such reports to the Director upon request.

17. GOVERNING LAW: This contract shall be governed and construed by the laws of the State of Oregon.

18. SEVERABILITY: 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.

19. MERGER: This writing and the attached exhibits constitute the entire and final contract between the parties. No modification of this agreement shall be effective unless and until it is made in writing and signed by both parties.

DATED this _____ day of _____, 20 _____.

CONTRACTOR

BENTON COUNTY

Josh Wheeler, P.E.
Public Works Director & Contracting Officer

Date: _____

Date: _____

Reviewed as to form:

County Counsel

AFFIDAVIT

CONTRACTOR declares that it does not currently employ, and will not employ any individuals for work under this contract during the term this contract is in force.

Principal

Date

ATTACHMENT A

INSURANCE REQUIREMENTS

The CONTRACTOR and its subcontractors shall maintain insurance acceptable to the COUNTY in full force and effect throughout the term of this contract.

It is agreed that any insurance maintained by COUNTY shall apply in excess of, and not contribute with, insurance provided by CONTRACTOR. The policy or policies of insurance maintained by the CONTRACTOR and its subcontractors shall provide at least the following limits and coverages.

TYPE OF INSURANCE & LIMITS OF LIABILITY

X **General Liability** including personal injury, bodily injury and property damage with limits as follows:

Either

_____ \$1,000,000 Per Occurrence / \$2,000,000 General Aggregate /
\$2,000,000 Products and Completed Operations Aggregate.
Aggregates shall apply per Project.

Or

_____ \$2,000,000 Per Occurrence / \$4,000,000 General Aggregate /
\$4,000,000 Products and Completed Operations Aggregate.
Aggregates shall apply per project.

X **Automobile Liability** Covering any vehicle used on County business

Either

_____ \$1,000,000 per accident

Or

_____ \$2,000,000 per accident

X **Worker's Compensation** Per Oregon State Statutes

x **Professional Liability** limits not less than \$1,000,000 Per Claim and \$1,000,000 annual aggregate with 24 months tail coverage.

_____ **Property of Others in Transit** (if Contractor to haul County Equipment) limits to be not less than \$100,000 per occurrence / \$500,000 General Aggregate

If this contract extends beyond July 1, 2017, the above limits shall rise to the limits established in the Oregon Tort Limit Act, ORS 30.260, 30.261, 30.272, and 30.273. Contractor must provide proof of increased insurance coverage to coincide with statutory increases in the tort liability caps.

CONTRACTOR'S general liability and automobile insurance must be evidenced by certificates from the insurers. The policies shall name Benton County, its officers, agents and employees as additional insureds and shall provide Benton County with a 30-day notice of cancellation.

Worker's compensation insurance must be evidenced by a certificate from the insurer. The certificate need not name Benton County as an additional insured, but must list Benton County as a certificate holder and provide a 30-day notice of cancellation to Benton County.

Certificates of Insurance shall be forwarded to:

Benton County Public Works
360 SW Avery Avenue
Corvallis, OR 97333

CONTRACTOR agrees to deposit with the COUNTY, at the time s/he returns the executed contract, Certificates of Insurance or Binders of Insurance if the policy is new or has expired, sufficient to satisfy the COUNTY that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificates and/or binders thereof on deposit with the COUNTY during the entire term of this contract. Such certificates and/or binders must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit CONTRACTOR'S liability hereunder. Notwithstanding said insurance, CONTRACTOR shall be obligated for the total amount of any damage, injury or loss caused by negligence or neglect connected with this contract.