

ATTACHMENT "A" - SAMPLE PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the Woodburn Fire Protection District #6, as defined by ORS 478 (hereinafter referred to as "DISTRICT"), and _____, a _____ (hereinafter referred to as "CONSULTANT").

WHEREAS, DISTRICT needs certain professional consultant services; and

WHEREAS, DISTRICT wants to engage CONSULTANT to provide these services by reason of its qualifications and experience; and

WHEREAS, CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein,

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 – SCOPE OF SERVICES

The Scope of Work to be performed by CONSULTANT under this Agreement is described in Exhibit A, which is attached to this Agreement. Additionally, CONSULTANT's proposal in response to _____ is incorporated by reference and are a part of this Agreement as if fully set forth.

SECTION 2 – DUTIES OF CONSULTANT

A. CONSULTANT shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its work.

B. CONSULTANT represents that it is qualified to furnish the services described in this Agreement.

C. CONSULTANT shall be responsible for employing or engaging all persons necessary to perform its services.

D. It is understood that _____ will be designated by CONSULTANT as the person providing services to DISTRICT under this Agreement and that this designated person shall not be replaced without DISTRICT's approval.

SECTION 3 – DUTIES OF THE DISTRICT

A. DISTRICT shall provide CONSULTANT the pertinent information regarding DISTRICT's requirements for the Project.

B. DISTRICT shall examine documents submitted by CONSULTANT and shall render decisions promptly, to avoid unreasonable delay in the progress of CONSULTANT'S work.

C. DISTRICT certifies that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.

D. The contact person on the Project for DISTRICT is designated as the Fire Chief or assigned delegate. DISTRICT shall provide written notice to CONSULTANT if DISTRICT changes its contact person.

SECTION 4 – TERM

The services to be performed under this Agreement shall commence upon execution of the Agreement by both parties and be completed on or before _____.

SECTION 5 – PAYMENT

Payment shall be made by DISTRICT to CONSULTANT only for services rendered and upon submission of a payment request and DISTRICT approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, DISTRICT agrees to pay CONSULTANT a fee not to exceed \$_____. Compensation shall be only for actual hours worked on the Project, at the rates specified in Exhibit B, and related direct expenses. CONSULTANT shall furnish with each bill for services an itemized statement showing the amount of services devoted to the Project by CONSULTANT as well as any agents or employees of CONSULTANT and any direct expenses.

Section 6 – TERMINATION

Without limitation to such rights or remedies as DISTRICT shall otherwise have by law, DISTRICT shall have the right to terminate this Agreement or suspend work on the Project for any reason upon ten (10) days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement upon receipt of said written notice.

SECTION 7 – OWNERSHIP OF DOCUMENTS

All documents prepared by CONSULTANT in the performance of this Agreement, although instruments of professional service, are and shall be the property of the DISTRICT, whether the Project for which they are made is executed or not.

SECTION 8 – CONFIDENTIALITY

All reports and documents prepared by CONSULTANT in connection with the performance of this Agreement shall be considered as confidential by CONSULTANT until they are released by DISTRICT to the public. CONSULTANT shall not make any such documents or information available to any individual or organization not employed by CONSULTANT or DISTRICT without the written consent of DISTRICT before any such release.

SECTION 9 – INTEREST OF CONSULTANT

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 – CONSULTANT'S STATUS

It is expressly agreed that in the performance of the professional services required under this Agreement, CONSULTANT shall at all times be considered an independent contractor, under control of DISTRICT as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONSULTANT an agent or employee of DISTRICT while providing services under this Agreement.

Section 11 – Indemnity

CONSULTANT agrees to hold harmless and indemnify DISTRICT, its officers and employees from and against any and all claims, loss, liability, damage, and expense arising from the negligent, or claimed negligent, performance of this Agreement by CONSULTANT, its officers or employees. CONSULTANT agrees to defend DISTRICT, its officers or employees against any such claims. This provision does not apply to claims, loss, liability or damage or expense arising from the sole negligence, or willful misconduct, of DISTRICT.

Section 12 – Insurance

CONSULTANT shall provide and maintain:

A. Commercial General Liability Insurance, occurrence form, with a limit of not less than \$1,000,000 for each occurrence.

B. Automobile Liability Insurance, occurrence form, with a limit of not less than \$1,000,000.00 for each occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.

C. Workers Compensation in at least the minimum statutory limits.

D. All insurance shall:

1. Include DISTRICT as an additional insured with respect to this Agreement and the performance of services in this Agreement.
2. Be primary with respect to any other insurance or self-insurance programs of DISTRICT.
3. Be evidenced, prior to commencement of services, by properly executed policy endorsements in addition to a certificate of insurance provided to DISTRICT.
4. No changes in insurance may be made without the written approval of DISTRICT.

SECTION 13 – NONASSIGNABILITY

Both parties recognize that this Agreement is for the personal services of CONSULTANT and cannot be transferred, assigned, or subcontracted by CONSULTANT without the prior written consent of DISTRICT.

SECTION 14 – RELIANCE UPON PROFESSIONAL SKILL OF CONSULTANT

It is mutually understood and agreed by and between the parties hereto that CONSULTANT is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement and that DISTRICT relies upon the skill of CONSULTANT to do and perform the work in the most skillful manner, and CONSULTANT agrees to perform the work. The acceptance of CONSULTANT'S work by DISTRICT does not operate as a release of CONSULTANT from said obligation.

SECTION 15 –WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money, which may become due hereunder, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement of any applicable law or ordinance.

SECTION 16 – STATE PUBLIC CONTRACT PROVISIONS

All requirements of ORS Chapters 279, 279A, 279B, and 279C including but not limited to the following, as applicable, are incorporated herein by reference.

A. If CONSULTANT fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Contract as such claim becomes due, DISTRICT may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due CONSULTANT by reason of the Contract. The payment of a claim in the manner authorized above shall not relieve the CONSULTANT or its surety from its obligation with respect to any unpaid claims.

B. CONSULTANT and its subcontractors, if any, are subject to Oregon Workers' Compensation Law, which requires all employers that employ subject workers who work under this Contract in the State of Oregon to comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. CONSULTANT shall ensure that each of its subcontractors, if any, complies with these requirements.

C. CONSULTANT shall, upon demand, furnish to the DISTRICT, written proof of workers' compensation insurance coverage. CONSULTANT is required to submit written notice to the DISTRICT thirty (30) days prior to cancellation of said coverage.

D. CONSULTANT shall use recyclable products to the maximum extent economically feasible in the performance of the contract.

E. 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.

F. CONSULTANT agrees and certifies that it is a corporation in good standing and licensed to do business in the State of Oregon. CONSULTANT agrees and certifies that it has complied and will continue to comply with all Oregon laws relating to the performance of CONSULTANT's obligations under this Contract.

G. CONSULTANT shall:

G.1 Make payment promptly, as due, to all persons supplying to the CONSULTANT labor and material for the prosecution of the work provided for in the contract documents;

G.2 Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Contract;

G.3 Not permit any lien or claim to be filed or prosecuted against the DISTRICT on account of any labor or material furnished; and

G.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

H. The CONSULTANT shall promptly as due, make payment to any person, co-partnership or association or corporation furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employee of such CONSULTANT, of all sums which the CONSULTANT agrees to pay for such services and all moneys and sums which the CONSULTANT collected or deducted from the wages of employees pursuant to any law, contract or Agreement for the purpose of providing or paying for such service.

I. The CONSULTANT shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29USC201 et. seq.).

J. An employer must give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

K. CONSULTANT will comply with 279.835 et seq. in the procurement of products and services from a nonprofit agency for disabled individuals.

SECTION 17 – ATTORNEY FEES

In the event a suit or action is instituted to enforce any right guaranteed pursuant to this Agreement, the prevailing party shall be entitled to, in addition to the statutory costs and disbursements, reasonable attorney fees to be fixed by the trial and appellate courts respectively.

SECTION 18 – NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

Woodburn Fire District:
1776 Newberg Hwy
Woodburn, OR 97071

TO CONSULTANT:

SECTION 19 – AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated Agreement between DISTRICT and CONSULTANT and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both DISTRICT and CONSULTANT.

SECTION 20 – GOVERNING LAW

This Agreement shall be governed by the laws of the State of Oregon.

IN WITNESS WHEREOF, DISTRICT and CONSULTANT have executed this Agreement the day and year written.

WOODBURN FIRE DISTRICT:

By:
Paul Iverson

Title: Fire Chief

Date: _____

CONSULTANT:

By: _____

Title: _____

Date: _____