

## PERSONAL SERVICES AGREEMENT

Contract No.

THIS PERSONAL SERVICES AGREEMENT ("Agreement") is made and entered into by and between the City of Scappoose ("City"), an Oregon municipal corporation, and ("Contractor") (collectively referred to as the "Parties").

### RECITALS

- A. The City is in need of services, and Contractor is qualified and prepared to provide such services.
- B. It is the purpose of this Agreement to establish the services to be provided by Contractor and the compensation and terms for such services.

### AGREEMENT

1. **Engagement.** The City hereby engages Contractor to provide services related to , and Contractor accepts such engagement. The principal contact for Contractor shall be .
2. **Scope of Work.** The duties and responsibilities of the Contractor (hereinafter referred to as the "Services"), including a schedule of performance, shall be as described in Exhibit A, which is attached hereto and incorporated herein by reference. Any changes to the Agreement, including the Scope of Work in Exhibit A shall be in writing, signed by both parties, and shall be attached to and become a part of this Agreement.
3. **Term.** Subject to the termination provisions of paragraph 12 of this Agreement, this Agreement shall commence once executed by both parties and shall terminate on . The City reserves the exclusive right to extend the Agreement for a period of two (2) years in one (1) year increments. Such extensions shall be in writing with terms acceptable to both parties.
4. **Compensation.** The terms of compensation shall be as provided in Exhibit attached hereto and incorporated by reference. The total compensation under this Agreement shall not exceed \$ .
5. **Payment.** City agrees to pay Contractor for and in consideration of the faithful performance of the Services, and Contractor agrees to accept from the City, as and for compensation for the faithful performance of the Services the fees as outlined in Exhibit .
  - 5.1. Contractor shall make and keep reasonable records of work performed pursuant to this Agreement and shall provide detailed monthly billings to the City. Following approval by the City Manager, billings shall be paid in full within thirty (30) days of receipt thereof. The City shall notify Contractor of any disputed amount within fifteen (15) days from receipt of the invoice, give reasons for the objection, and promptly pay the undisputed amount. Disputed amounts may be withheld without penalty or interest pending resolution of the dispute.
  - 5.2. City may suspend or withhold payments if Contractor fails to comply with requirements of this Agreement.
  - 5.3. Contractor is engaged by City as an independent contractor in accordance with the

standards prescribed in ORS 670.600. Contractor will not be entitled to any benefits that are provided by City to City employees.

**5.4.** Any term of this Agreement that is held by a court to create an obligation that violates the provisions of Article XI, Section 9 of the Oregon Constitution will be void. City's obligation to make payments under this Agreement is conditioned upon appropriation of funds pursuant to ORS 294.305 to 294.565.

**6. Document Ownership.** Upon acceptance of the Services and payment for such Services by the City, all work products, including, but not limited to documents, drawings, papers, computer programs, electronic or digital recordings, and photographs performed or produced by the Contractor for the benefit of City under this Agreement shall become property of the City.

**7. Notices.** All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail unless some other means or method of notice is required by law. Notices, bills and payments sent by mail should be addressed as follows:

CITY: City Manager  
City of Scappoose  
33568 E. Columbia Ave.  
Scappoose, OR 97056

CONTRACTOR:

When so addressed, such notices, bills and payments shall be deemed given upon deposit in the United States mail, postage prepaid. Each party shall notify the other of any change in address for notices.

**8. Contractor's Responsibility for the Services.**

**8.1** Time is of the essence on this Agreement. Contractor shall perform the Services promptly and efficiently and in accordance with the Scope of Work provisions set forth in Exhibit . Contractor shall provide all labor, materials, tools, equipment, and incidentals that are necessary for the proper performance of the Services, including items that may be inferred from the specifications or from prevailing custom or trade usage as being necessary to produce the intended results.

**8.2** Unless the Agreement requires certain means or methods, Contractor shall be responsible for the means and methods used for the Services.

**8.3** When necessary to achieve the specified deliverables of this Agreement, Contractor shall provide and properly supervise qualified workers. Workers must have any licenses and certificates required by applicable laws.

**8.4** Contractor shall not assign any interest in this Agreement or enter into subcontractors for the Services without the prior approval of the City.

9. **Standard of Care.** Contractor shall comply with applicable standards of professional care in the performance of the Services. Contractor will prepare materials and deliverables in accordance with generally accepted standards of professional practice for the intended services.
10. **Consequential Damages.** Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by either party's breach of contract, willful misconduct, negligent act or omission, or other wrongful act.
11. **Insurance.** At all times during the term of this Agreement, Contractor shall carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, with minimum limits not less than Two Million Dollars (\$2,000,000.00) for each occurrence, Three Million Dollars (\$3,000,000.00) aggregate, against any personal injury, death, loss or damage resulting from the wrongful and negligent acts by the Contractor, its subcontractors, agents or employees. Said policy or policies shall be issued by an insurer rated in Best's Insurance Guide with a rating of at least A. Contractor shall also provide comprehensive auto liability insurance covering personal injury and property damage in the amount of One Million Dollars (\$1,000,000.00) covering "Any Auto" utilized by Contractor, its subcontractors, agents or employees, in performing the Services.
  - 11.1. Contractor shall comply with applicable statutory provisions for all employees who work in the State of Oregon as required by law.
  - 11.2. **IF Applicable:** Contractor shall provide professional liability (errors and omissions) insurance in the amount of One Million Dollars (\$1,000,000.00). If such coverage is on "Claims Made" basis, coverage shall remain in force for two (2) years beyond termination of this Agreement.
  - 11.3. All insurance policies shall provide that the insurance coverage shall not be canceled or reduced by the insurance carrier without thirty (30) days' prior written notice to the City. Contractor agrees that it will not cancel or reduce said insurance coverage.
  - 11.4. Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, the City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon. If the City procures such insurance, the City shall retain any cost incurred for same from moneys due the Contractor hereunder.
  - 11.5. At all times during the term of this Agreement, Contractor shall maintain on file with the City a Certificate of Insurance or a copy of actual policies acceptable to the City showing that the aforesaid policies are in effect in the required amounts. The policies shall contain an endorsement naming the City, its officers, employees and agents, as Additional Insured (except for the professional liability and workers' compensation insurance), providing that the policies cannot be canceled or reduced except on thirty (30) days' prior notice to the City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.
12. **Termination.** The City may terminate this Agreement if the City determines in good faith that termination is in the best interest of the public. Notwithstanding the preceding sentence, either

party may terminate this Agreement upon seven (7) days' written notice if one of the following occurs: (i) the other party fails to substantially perform in accordance with the terms of this Agreement; (ii) the City in its sole discretion decides to abandon the project. If either party terminates this Agreement, Contractor shall receive compensation only for Services actually performed up to the date of termination.

13. **No Third Party Rights.** This Agreement shall not create any rights in or inure to the benefit of any parties other than City and Contractor.
14. **Modification.** Any modification of the provisions of this Agreement shall be reduced to writing and signed by the parties.
15. **Waiver.** A waiver by a party of any provision of this Agreement, including breach, by the other shall not be deemed to be a waiver of any other provision or subsequent breach. To be effective, any waiver must be in writing and signed by the party waiving its rights.
16. **Indemnification.** Contractor and the officers, employees, agents, and subcontractors of Contractor are not agents of City as those terms are used in ORS 30.265. Contractor shall defend, indemnify, and hold harmless City and its officers, employees, and agents from all claims arising from the Services, including claims arising from injury to any person or damage to property, breach of this Agreement by Contractor, or violation of applicable law by Contractor. Contractor shall not be responsible claims caused by the negligence or other wrongful acts or omissions of City or City's officers, employees, or agents.
17. **Governing Laws.** This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court for Columbia County, Oregon.
18. **Compliance with Law.** Contractor shall comply with all applicable federal, state, and local statutes, ordinances, administrative rules, regulations, and other legal requirements in performance of this Agreement.
  - 18.1. Contractor shall comply with applicable provisions of ORS 279B.020, 279B.025, 279B.220, 279B.230, and 279B.235. Pursuant to ORS 279B.235(3), any person employed by Contractor who performs services shall be paid at least time and a half pay for all overtime in excess of forty (40) hours in any one (1) week, except for persons who are excluded or exempt from overtime pay under ORS 653.010 to 653.261 or under 29 U.S.C. Sections 201 to 209.
  - 18.2. Contractor is a "subject employer" as defined in ORS 656.005 and shall comply with ORS 656.017. Contractor shall provide workers' compensation coverage for "subject workers" employed to perform the services. Before performing any services, Contractor shall provide a certificate of insurance for workers' compensation coverage or other proof of coverage, or certify that no subject workers will perform services.
  - 18.3. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, physical or mental disability, disabled veteran, or veteran status. Contractor shall take affirmative action to employ, advance in employment, and otherwise treat employees during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, disabled veteran, or veteran status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Violation of the above shall be grounds for cancellation, termination, or suspension of this Agreement in whole or in part by City.

- 18.4 Contractor shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of the City in connection with this Agreement in violation of ORS Chapter 244.
19. **Confidentiality.** Contractor shall maintain the confidentiality, both external and internal, or that confidential information to which it is exposed by reason of this Agreement. Contractor warrants that its employees assigned to this Agreement shall maintain necessary confidentiality.
20. **Publicity.** Contractor shall not use any data, pictures or other representations of the City in its external advertising, marketing programs, or other promotional efforts except with prior specific written authorization from the City.
21. **Succession.** This Agreement shall inure to the benefit of, and shall be binding upon each of the parties hereto and such parties' partners, successors, executors, administrators, and assigns.
22. **Assignment.** This Agreement shall not be assigned by Contractor without the express written consent of the City. Contractor shall not assign Contractor's interest in this Agreement or enter into subcontracts for any part of the Services without the prior written consent of the City.
23. **Mediation.** Should any dispute arise between the parties to this Agreement, it is agreed that such dispute will be submitted to a mediator prior to any litigation. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Scappoose, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If party requests mediation and the other party fails to respond within ten (10) days, a mediator shall be appointed by the presiding judge of the Columbia County Circuit Court upon request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this section. Nothing in this section shall preclude a party from seeking equitable relief to enjoin a violation of this Agreement.
24. **Attorney Fees.** If legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred herein at trial and on appeal.
26. **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the services described herein.
27. **Severance.** If any provision of this Agreement is held to be invalid, it will not affect the validity of any other provision. This Agreement will be construed as if the invalid provision had never been included.
28. **Records Retention.** Contractor shall retain documents in accordance with Oregon Administrative Rules (OAR 166-200) guidelines as they pertain to the management of public records for cities.

IN WITNESS WHEREOF, City has caused this Agreement to be executed in duplicate originals by its duly authorized undersigned agents and Contractor has executed this Agreement on the date written below.

**CITY OF SCAPPOOSE**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE