

JACKSON COUNTY FIRE DISTRICT 3

PERSONAL SERVICE AGREEMENT FOR REGIONAL FIRE SERVICE PLANNING AND CAPACITY STUDY SERVICES

BASED UPON the proposals submitted in response to the Request for Proposals for Fire Service Planning and Capacity Study Services (RFP) issued by Jackson County Fire District 3 (District), District and _____ (Consultant) hereby enter into an agreement for the provision of personal services in accordance with the RFP and Consultant's Proposal.

All terms of the following exhibits are hereby incorporated by reference into this Agreement, and Consultant agrees to comply with each:

- (1) Exhibit A – Request for Proposals
- (2) Exhibit B – Consultant's Proposal / Schedule of Rates
- (3) Exhibit C – ORS 279B requirements for Personal Service Contracts

In the event of any conflict, the terms of this Agreement shall control, followed by Exhibits A, C, then B, in that order.

1. Term. The term of this Agreement shall extend from _____, 20__, to _____, 20__, unless extended for up to two additional one-year terms in writing by District.

2. Scope of Work. Consultant agrees to perform during the term of this Agreement, the following services:

2.1 Generally, Consultant shall provide all materials and services associated with providing Fire Service Planning and Capacity Study Services to District (Services).

2.2 Specifically, Consultant shall perform the Services set forth as set forth in District's RFP and Consultant's proposal dated _____, 20__, incorporated herein as Exhibits A and B, respectively.

2.3 Consultant shall not perform and District shall not pay for Consultant's services which are outside the work described in this Section 2, unless District provides prior written consent for such work. Consultant's services which are outside of the Scope of Work and approved in advance, in writing by District shall be charged as provided in Exhibit B, up to the limits set in Section 3 of this Agreement.

2.4 Consultant agrees that District shall own any reports and documentation that Consultant provides under this Agreement.

3. Compensation.

3.1 Compensation. For the Services described and performed by Consultant, plus any pre-approved reimbursable amounts, District agrees to pay, and the Consultant agrees to accept, compensation in the maximum not to exceed amount of ____ [insert payment amount/arrangement] _____. District shall not be responsible for amounts in excess of this maximum amount without an amendment entered into pursuant to Section 28 of this Agreement.

3.2 Invoices. Payments shall be based upon Consultant's invoices submitted to District, detailing the previous month's fees and costs. Consultant's failure to invoice for Services within three (3) months of billing deadline waives Consultant's right to that payment.

3.3 Payments.

(A) District will review Consultant's invoice and within ten (10) days of receipt notify Consultant in writing if there is a disagreement or dispute with the invoice. If there are no such disputes, District shall pay the invoice amount in full within thirty (30) days of invoice date.

(B) If District fails to make any payment due Consultant for Services and expenses within thirty (30) days of the date on Consultant's invoice therefore, late fees will be added to amounts due Consultant at the rate of 1.0 percent (1%) per month from original invoice date. In addition, Consultant may, after giving seven (7) days' written notice to District, suspend Services under this Agreement until Consultant has been paid in full all amounts due for Services, expenses, and charges, except any invoices in dispute. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute.

4. Covenants. Consultant agrees to faithfully and diligently perform the duties required by this Agreement and will not engage in any activity that is or may be contrary to the welfare, interest, or benefit of District.

5. District Responsibilities.

5.1 In addition to District's payment obligations, as set forth in Section 3.3 above, District shall report the total amount of all payments to Consultant, including any expenses, in accordance with federal Internal Revenue Services and State of Oregon Department of Revenue Regulations.

5.2 District shall provide Consultant with all information and facility access reasonably necessary for Consultant to provide Services.

6. Termination.

6.1 Termination for Convenience. This Agreement may be terminated by mutual consent of the parties upon written notice at any time. In addition, District may terminate all or part of this Agreement upon determining that termination is in the best interest of District by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Consultant.

Upon termination under this Section, Consultant shall be entitled to payment in accordance with the terms of this Agreement for work completed and accepted before termination less previous amounts paid and any claim(s) District has against Consultant. Pursuant to this Section, Consultant shall submit an itemized invoice for all unreimbursed work completed before termination. District shall not be liable for any costs invoiced later than thirty (30) days after termination unless Consultant can show good cause beyond its control for the delay.

6.2 Termination for Default.

(A) If District fails to perform in the manner called for in this Agreement or if District fails to comply with any other provisions of the Agreement, the Consultant may terminate this Agreement for default after giving District the notice and opportunity to cure required by this Section. Prior to termination for default, the District must give District written notice of the breach and of the District's intent to terminate. If District has not entirely cured the breach within fifteen (15) days of the date of the notice, then the Consultant may terminate the Agreement at any time thereafter by giving District a written notice of termination.

(B) If the Consultant fails to perform in the manner called for in this Agreement or if the Consultant fails to comply with any other provisions of the Agreement, District may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Consultant setting forth the manner in which the Consultant is in default. The Consultant shall be paid the Agreement price only for Services performed in accordance with the manner of performance as set forth in this Agreement.

7. Disengagement Agreement. Upon receiving a notice of termination, and except as otherwise directed in writing by District, Consultant will continue to perform Services to the date agreed upon as the termination date.
8. Standard of Care. The standard of care applicable to Consultant's Services will be the degree of skill and diligence normally employed by professionals performing the same or similar services at the time such Services are performed. Consultant will re-perform any Services not meeting this standard without additional compensation, and shall perform such additional work as may be necessary to correct errors in the Services required under this Agreement without undue delay and without additional costs.
9. Remedies. In the event of breach of this Agreement, the parties shall have the following remedies:
 - 9.1 If terminated under Section 6.2 by District due to a breach by Consultant, District may complete the work either itself, by agreement with another Consultant, or by a combination thereof. If the cost of completing the work exceeds the compensation to Consultant as provided under this Agreement, then Consultant shall pay to District the amount of the reasonable excess.
 - 9.2 In addition to the above remedies for a breach by Consultant, District also shall be entitled to any other equitable and legal remedies that are available.
 - 9.3 If District breaches this Agreement, Consultant's remedy shall be limited to termination of the Agreement and receipt of Agreement payments to which Consultant is entitled.
 - 9.4 District shall not be liable for any indirect, incidental, consequential, or special damages under the Agreement or any damages arising solely from terminating the Agreement in accordance with its terms.
10. Confidentiality. Consultant shall maintain the confidentiality, both external and internal, of any confidential information to which it is exposed by reason of this Agreement. Consultant warrants that its employees assigned to this Agreement shall maintain

necessary confidentiality. Consultant shall require similar agreements from any Consultant subcontractors to maintain the confidentiality of District information.

11. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

District: Mike Hussey, Fire Chief
Jackson County Fire District 3
8333 Agate Rd
White City, OR 97503
Phone: (541) 831-2751
Email: mikeh@jcf3.com

Consultant: _____

Phone: _____
Email: _____

12. Insurance. Consultant shall maintain the following limits of insurance with a carrier(s) rated A- or better by A.M. Best:

- 12.1 General Commercial liability insurance -- \$2,000,000 aggregate
12.2 Professional liability insurance -- \$3,000,000 aggregate
12.3 Workers' Compensation insurance -- \$1,000,000
12.4 Automobile Liability Insurance -- \$1,000,000 each accident

Consultant shall: (a) provide District with a copy of a current Certificate of Insurance with the coverages listed above; (b) include District as an additional insured for General Commercial Liability (subject to the terms and conditions of the applicable Consultant insurance policy); and (c) provide District with 30-day notice prior to cancellation.

13. Access to Records. The Consultant shall maintain, and District and its duly authorized representatives shall have access to the books, documents, papers, and non-confidential records of the Consultant which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by District.
14. Indemnity. To the extent permitted by law, Consultant shall protect, defend, indemnify and hold District and its officers, agents, and employees harmless from and against all claims, demands, damages, costs, actions and causes of actions, including tort claims, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Agreement or Consultant's violation of any law,

ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of District. Consultant expressly waives any right to District indemnification and defense under the Oregon Tort Claims Act.

15. Force Majeure. Consultant shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such failure is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.
16. Independent Contractor. Consultant is an independent contractor for all purposes and is not entitled to any compensation other than the compensation provided for under this Agreement. While District reserves the right to set various schedules and evaluate the quality of Consultant's completed work, District cannot and will not control the means and manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the work provided for under this Agreement. Consultant is responsible for all federal and state taxes applicable to compensation and payment paid to Consultant under this Agreement and will not have any amounts withheld by District to cover Consultant's tax obligations. Consultant is not eligible for any District fringe benefit plans. It is recognized that Consultant may or will be performing work during the term for other parties and that District is not the exclusive user of the Services that Consultant provides.
17. Federal Funds. If payment under this Agreement is to be charged against federal funds, Consultant is not currently employed by the federal government and the amount charged does not exceed Consultant's normal charge for the type of service provided.
18. No Benefits. Consultant will not be eligible for any federal Social Security, state Worker's Compensation, unemployment insurance or Public Employees Retirement System benefits from payments made pursuant to this Agreement, except as a self-employed individual.
19. PERS. Consultant is not a member of the Oregon Public Employees Retirement System and is not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
20. Assignment. Consultant shall not assign or subcontract any of its obligations under this Agreement without District's prior written consent, which may be granted or withheld in District's sole discretion. Any subcontract made by Consultant shall incorporate by reference all the terms of this Agreement. District's consent to any assignment or subcontract shall not release Consultant from liability under this Agreement or from any obligation to be performed under this Agreement, whether occurring before or after such consent, assignment, or subcontract, and District shall incur no obligation other than its obligations under this Agreement. The Consultant agrees that if subcontractors are employed in the performance of this Agreement, the Consultant and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.
21. Public Contracting Requirements. Consultant shall comply with all federal, state and local laws and ordinances applicable to the work under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code including

ORS 279B.020, 279B.220, 279B.230, and 279B.235, as more particularly set forth in Exhibit C.

22. Governing Law. This Agreement is to be governed by and under the laws of the State of Oregon. Nothing herein shall be construed as a waiver by District of its protections under the Oregon Tort Claims Act.
23. Consent to Jurisdiction. The parties hereby consent to jurisdiction of the Jackson County Circuit Court, Jackson County, Oregon, over all legal matters pertaining to this Agreement, including, but not limited to, its enforcement, interpretation or rescission.
24. Arbitration. If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, or enforcement of this Agreement, the parties shall, upon the request of District, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 *et seq.* Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Jackson County Circuit Court, upon the request of either party submitted in accordance with ORS 36.645. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.
25. Continuation During Disputes. Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Consultant shall continue to perform its work pending resolution of a dispute and District shall make payments as required by the Agreement for undisputed portions of work.
26. Attorney Fees. If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Agreement, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for District to incur the services of an attorney to enforce any provision of this Agreement without initiating litigation, Consultant agrees to pay District's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.
27. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.
28. Facsimile Signatures. The delivery of signatures to this Agreement by facsimile or other electronic transmission shall be binding as original signatures.
29. Entire Agreement. This Agreement shall be the exclusive agreement between the parties for the Fire Service Planning and Capacity Study Services. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of both parties, except as otherwise authorized herein.

30. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by an authorized representative of each party.
31. Counterparts. This Agreement may be executed and delivered in any number of counterparts, and all such counterparts shall constitute the same instrument. District understands and agrees that an authentic copy or electronic reproduction of this Agreement shall have the same force and effect as an original counterpart.

DISTRICT:

CONSULTANT

Jackson County Fire District 3

[Consultant Name]

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

EXHIBIT B

CONSULTANT'S PROPOSAL/FEE SCHEDULE

EXHIBIT C

ORS CHAPTER 279B PUBLIC CONTRACTING REQUIREMENTS PERSONAL SERVICES

- (1) Consultant shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1).
- (2) Consultant shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Consultant or Subcontractor incurred in the performance of the contract. ORS 279B.220(2).
- (3) Consultant shall not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3).
- (4) Consultant and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617. ORS 279B.220(4).
- (5) Consultant agrees that if Consultant fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Consultant or a Subcontractor by any person in connection with the contract as such claim becomes due, the District may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Consultant by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve Consultant or Consultant's surety from its obligation with respect to any unpaid claim. If Consultant is unable to determine the validity of any claim for labor or material furnished, District may withhold from any current payment due Consultant an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
- (6) Consultant shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Consultant, of all sums which the Consultant agrees to pay for such services and all monies 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. ORS 279B.230(1).
- (7) All subject employers working under the Consultant are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2).
- (8) 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 (29 USC 201, *et seq*). ORS 279B.235(3).
- (9) Consultant must give notice to employees who work on this contract 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 the days per week that the employees may be required to work. ORS 279B.235(2).

- (10) All sums due the State Unemployment Compensation Fund from Consultant or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430.
- (11) The contract may be canceled at the election of District for any willful failure on the part of Consultant to faithfully perform the contract according to its terms.
- (12) Consultant certifies its compliance with all applicable state and local tax laws, including but not limited to ORS 305.385, ORS 305.620, ORS chapters 316, 317 and 318. Consultant certifies it will continue to comply with all such tax laws during the term of this contract. Consultant's failure to comply with such state and local tax laws prior to executing this contract or during the term of this contract constitutes a default for which District may terminate this contract and seek damages and other relief available under the terms of this contract or applicable law. ORS 279B.045.
- (13) Consultant certifies that it has not discriminated and will not discriminate against minorities, women, emerging small business enterprises or a business enterprise that is controlled by or that employs a veteran as defined in ORS 408.225 in obtaining any required subcontractors. ORS 279A.110.
- (14) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120.

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