

**RESOLUTION NO. 2020 – 69**

A Resolution of the City of McMinnville Approving a Personal Services Contract with Erskine Law Practice, LLC to Provide City Prosecutorial Services.

**RECITALS:**

**WHEREAS**, the City of McMinnville ("City") undertook a request for proposals in 2019 to obtain City Prosecutor services; and

**WHEREAS**, the City selected Erskine Law Practice, LLC ("Contractor") as the successful proposer and entered into a contract with Contractor to provide City Prosecutor services for the 2020 calendar year; and

**WHEREAS**, the City desires to continue to contract with Contractor to provide City Prosecutor services; and

**WHEREAS**, this contract, if approved, will result in a projected cost increase to the contract of 1.82%.

**NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON as follows:**

1. The City of McMinnville incorporates the above-stated findings as if fully set forth herein.
2. The City of McMinnville approves a personal services contract with Erskine Law Practice, LLC to provide City prosecutorial services for calendar year 2021 with a one-year option to renew, which contract is substantially similar to Exhibit 1 attached hereto.
3. This Resolution takes effect immediately upon passage.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 8th day of December 2020 by the following votes:

Ayes: Drabkin, Garvin, Geary, Menke, Peralta, Stassens

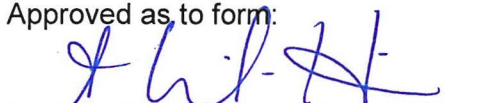
Nays: \_\_\_\_\_

Approved this 8<sup>th</sup> day of December 2020.



\_\_\_\_\_  
MAYOR

Approved as to form:

  
\_\_\_\_\_  
City Attorney

Attest:


  
\_\_\_\_\_  
City Recorder

EXHIBIT:

1. Personal Services Contract with Erskine Law Practice, LLC

Resolution No. 2020-69

Effective Date: December 8, 2020

Page 1 of 1

**CITY OF McMinnville, Oregon****PERSONAL SERVICES CONTRACT  
for  
City Prosecutorial Services**

This Contract is between the CITY OF McMinnville, a municipal corporation of the State of Oregon (City) and Erskine Law Practice, LLC. (Contractor). The City's Project Manager for this Contract is Amanda Guile-Hinman.

The parties mutually covenant and agree as follows:

- 1. Effective Date and Duration.** This contract is effective on January 1, 2021 and will expire, unless otherwise terminated or extended, on December 31, 2021. The parties may exercise one (1) option to renew this Contract for one additional year, through the execution of a written contract amendment. The parties agree that if the option is exercised, the parties will renegotiate the consideration provided in Section 3 below based the over-the-year percent change in the Consumer Price Index – All Urban Consumers (CPI-U) for West Region from October 2020 to October 2021.
- 2. Statement of Work.** The work to be performed under this contract consists of providing legal services as City Prosecutor and administrative duties of the City Prosecutor for the City of McMinnville, as more particularly described in the Statement of Work attached hereto and incorporated herein as **Exhibit A**. The Statement of the Work reflects both the work anticipated and the fees the Contractor will charge for each component of that work. The work provided will be guided by the Statement of the Work, but the Contractor will, with the approval and direction of the City, perform services in such a way as to ensure constant progress is being made to achieve the City's end goals in the most efficient manner possible.
- 3. Consideration.**
  - a. City agrees to pay Contractor a flat fee of \$8,654.70 each month comprised of \$6,109.20 per month paid for "Standard Prosecution Services" and \$2,545.50 per month paid for "Administrative Duties of the City Prosecutor" described in the Statement of Work. In addition, the City agrees to pay Contractor for hours actually worked for "Non-Standard Prosecution Services" at a rate of \$127.27 per hour, to be billed in six-minute (0.10 hour) increments. Contractor will be reimbursed for allowable expenses incurred for accomplishing the work required by this Contract.
  - b. Contractor will furnish with each invoice for services an itemized statement showing both the work performed and the number of hours devoted to the project by the Contractor and its agents. City will pay the Contractor for services within 30 days of receiving an itemized bill that has been approved by the Project Manager.
  - c. City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this contract.
- 4. Additional Services.** Additional services, not covered in Exhibit A, will be provided if mutually agreed upon by the parties and authorized or confirmed in writing by the City, and will be paid for by the City as provided in this Contract in addition to the compensation authorized in subsection 3a. If authorized by the City, the additional services will be performed under a series of Task Orders defining the services to be performed, time of performance, and cost for each phase of services.

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**CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE**

Name (please print): \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Social Security #: \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_

State Tax ID #: \_\_\_\_\_

Citizenship: Nonresident alien  Yes  No

Business Designation (check one):  Individual  Sole Proprietorship  Partnership  
 Corporation  Government/Nonprofit

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

I, the undersigned, understand that the Standard Terms and Conditions for Personal Services Contracts and Exhibits A, B, C, and D are an integral part of this contract and agree to perform the work described in Exhibit A in accordance with the terms and conditions of this contract; certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; and certify I am an independent contractor as defined in ORS 670.600.

Signed by Contractor:

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Date

*NOTICE TO CONTRACTOR: This contract does not bind the City of McMinnville unless and until it has been fully executed by the appropriate parties.*

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**CITY OF McMINNVILLE SIGNATURE**

Approved:

\_\_\_\_\_  
City Manager or Designee

\_\_\_\_\_  
Date

Reviewed:

\_\_\_\_\_  
City Attorney or Designee

\_\_\_\_\_  
Date

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**CITY OF McMinnville**  
STANDARD TERMS AND CONDITIONS FOR PERSONAL SERVICES CONTRACTS

**1. Contractor is Independent Contractor.**

a. Contractor will perform the work required by this contract as an independent contractor. Although the City reserves the right (i) to determine (and modify) the delivery schedule for the work to be performed and (ii) to evaluate the quality of the completed performance, the City 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 currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as Exhibit D.

c. Contractor will be responsible for any federal or state taxes applicable to any compensation or payment paid to Contractor under this contract.

d. If Contractor is a contributing member of the Public Employees' Retirement System, City will withhold Contractor's contribution to the retirement system from Contractor's compensation or payments under this contract and make a corresponding City contribution. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments to Contractor under this contract, except as a self-employed individual.

**2. Subcontracts and Assignment.** Contractor will not subcontract any of the work required by this contract, or assign or transfer any of its interest in this contract, without the prior written consent of the City. Contractor agrees that if subcontractors are employed in the performance of this contract, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

**3. No Third Party Beneficiaries.** City and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives or provides any benefit or right, 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.

**4. Successors in Interest.** The provisions of this contract will be binding upon and will inure to the benefit of the parties, and their respective successors and approved assigns, if any.

**5. Early Termination**

a. The City and the Contractor, by mutual written agreement, may terminate this Contract at any time.

b. The City, on 30 days written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.

c. Either the City or the Contractor may terminate this Contract in the event of a breach of the Contract by the other party. Prior to termination, however, the party seeking the termination will give to the other party written notice of the breach and of the party's intent to terminate. If the Party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

**6. Payment on Early Termination**

a. If this contract is terminated under 5(a) or 5(b), the City will pay the Contractor for work performed in accordance with the Contract prior to the termination date. Payment may be pro-rated as necessary.

b. If this contract is terminated under 5(c) by the Contractor due to a breach by the City, then the City will pay the Contractor as provided in subsection (a) of this section.

c. If this contract is terminated under 5(c) by the City due to a breach by the Contractor, then the City will pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7, Remedies.

**7. Remedies**

a. In the event of termination under 5(c) by the City due to a breach by the Contractor, the City may complete the work either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, the Contractor will pay to the City the amount of the reasonable excess.

b. The remedies provided to the City under section 5 and section 7 for a breach by the Contractor are not exclusive. The City will also be entitled to any other equitable and legal remedies that are available.

c. In the event of breach of this Contract by the City, the Contractor's remedy will be limited to termination of the Contract and receipt of payment as provided in section 5(c) and 6(b).

**8. Access to Records.** Contractor will maintain, and the City and its authorized representatives will have access to, all books, documents, papers and records of Contractor which relate to this contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records will be made available upon request. Payment for the cost of copies is reimbursable by the City.

**9. Ownership of Work.** All work products of the Contractor, including background data, documentation, and staff work that is preliminary to final reports, and which result from this contract, are the property of the City. Contractor will retain no ownership interests or rights in the work product. Use of any work product of the Contractor for any purpose other than the use intended by this contract is at the risk of the City.

**10. Compliance with Applicable Law.** Contractor will comply with all federal, state, and local laws and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279B.220, 279B.230, and 279B.235, as set forth on Exhibit B. Without limiting the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659A.142, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

**11. Indemnity and Hold Harmless**

a. The City shall defend, hold harmless and indemnify Erskine Law Practice to the full extent provided by Oregon Revised Statutes related to any claim in tort, professional liability or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duties as Municipal Prosecutor or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities as City Prosecutor, unless the act or omission involved malfeasance in office or willful or wanton neglect of duty. Contractor

may request and the City shall not unreasonably refuse to provide defense and indemnification, and independent legal representation of contractor's choosing of which the City may not unreasonably withhold approval. Such legal representation, provided by City or its insurer for contractor, shall extend until a final determination of the legal action including any appeals brought by either party.

b. To the extent allowed under Oregon law, the City shall indemnify contractor against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by Contractor in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of Contractor's duties.

c. Erskine Law Practice recognizes that the City shall have the right to compromise and settle unilaterally on terms which do not prejudice contractor; however, if contractor in their personal capacity is a party to the suit then contractor shall have a veto authority over any settlement. Further, the City shall pay all reasonable litigation expenses of contractor throughout the pendency of any litigation to which the contractor is a party, witness or advisor to the City. Such expense payments shall continue beyond contractor's service to the City as long as litigation is pending. The City agrees to pay contractor reasonable consulting fees and travel expenses when contractor serves as a witness, advisor or consultant to the City regarding pending litigation to which the City is a party.

d. Contractor shall defend, indemnify, and hold harmless the City, its officers, agents, and employees from any and all claims, actions, costs, judgments damages, and other expenses resulting from injury to any person (including injury resulting in death) or damage to property (including loss or destruction), arising out of or incident to malfeasance, willful and wanton neglect of duty, or knowing and intentional violation of law. Contractor shall not be responsible for any claims, actions, costs, judgments, damages, or other expenses caused by the actions of the City or City staff. The purpose of this section is to allocate risk for claims between City and contractor consistent with public policy as defined by the Oregon Tort Claims Act. Nothing in this Agreement is intended to waive any limitations on liability established by the Oregon Tort Claims Act.

**12. Insurance.** Contractor will provide insurance in accordance with Exhibit C.

**13. Waiver.** The failure of the City to enforce any provision of this contract will not constitute a waiver by the City of that or any other provision.

**14. Errors.** The Contractor will perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

**15. Governing Law.** The provisions of this contract will be construed in accordance with the laws of the State of Oregon and ordinances of the City of McMinnville, Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Yamhill County, Oregon. Provided, however, if the claim must be brought in a federal forum, then it will be brought and conducted in the United States District Court for the District of Oregon.

**16. 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 will not be affected, and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular term or provision held invalid.

**17. Merger Clause.** THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING, SIGNED BY BOTH PARTIES. ANY WAIVER, CONSENT, MODIFICATION, OR CHANGE, IF MADE, WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. BY ITS SIGNATURE, CONTRACTOR ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**EXHIBIT A**  
**STATEMENT OF THE WORK**

**1. Individuals Performing Duties.**

The City of McMinnville (City) contracts with Erskine Law Practice, LLC, (Erskine), to perform the prosecutorial and administrative duties outlined herein. The individuals currently associated with Erskine are Samuel Erskine and Shannon Lee Erskine and, under this proposal, either individual may perform prosecutorial and administrative duties. Other individuals employed by Erskine may be assigned duties in the future provided that the level of services remain consistent with the terms of this agreement.

**2. Standard Prosecution Services.**

Erskine will undertake to perform the following standard prosecutorial duties:

- a) **Case reviewing and issuing** – Review all criminal cases referred to the City Prosecutor’s office and make a timely issuing decision. For cases where prosecution is declined, draft a brief memo outlining the reason(s) for declining the case.
- b) **Pretrial negotiations** – Draft and provide a pretrial offer on all criminal cases and on violation cases where the defendant has retained counsel. Participate in any additional pretrial negotiations beyond the drafting of the initial offer.
- c) **Court appearances** – Appear as the City Prosecutor at court proceedings every Wednesday that court is in session on all criminal matters and on violation matters where the defendant has retained counsel.
- d) **Trials** – Prepare and try all criminal cases and all violation matters where the defendant has retained counsel.
- e) **Interfacing with crime victims, witnesses, and members of the public** – Respond appropriately to inquiries from victims, case witnesses, and members of the public.
- f) Prosecutorial services other than those identified in subsections (c) and (d) may be completed remotely. The City of McMinnville will agree to facilitate remote access to any computer systems belonging to the city that are necessary to carry out the functions identified in subsections (a), (b), and (e).

**3. Non-Standard Prosecution Services.**

Erskine will also undertake to perform the following non-standard prosecutorial duties:

- a) **Appeals** – Prepare and present criminal misdemeanor cases on appeal from Municipal Court.
- b) **Law enforcement advice** – Assist the City Attorney in providing legal advice to the City’s police department personnel related to criminal investigations, arrests, searches and seizures, and related criminal enforcement matters.
- c) **Policy review and advice** – Assist the City Attorney in providing legal advice to the City and in drafting ordinances related to criminal laws and public safety.

**4. Administrative Duties of the City Prosecutor**

Erskine will undertake to perform the following administrative duties:

- a) **General receptionist duties** – Receive and respond to inquiries from individuals or entities seeking information about the operations of the City Prosecutor’s office. A dedicated phone line will be available with general availability from 9:00 AM till 4:40 PM, Monday through Friday (excluding normal holidays). Mail correspondence directed to the City Prosecutor’s



office will continue to be sent to the address associated with the City Prosecutor's Office at City Hall and will be sorted by Municipal Court staff and placed in the City Prosecutor's mailbox at City Hall.

- b) Interfacing with Police Department – Create contact with McMinnville Police Department to facilitate the transferring of police reports and digital and physical evidence, the scheduling and subpoenaing of officers for court matters, and coordination with officers for the subpoenaing of civilian witnesses.
- c) Interfacing with Municipal Court and other jurisdictions – Respond to inquiries from municipal court staff. Facilitate information exchange between City Prosecutor and Yamhill County District Attorney's office or any other applicable law enforcement agency.
- d) Interfacing with crime victims, witnesses, and members of the public – Assist with necessary document creation and mailing of victim communication forms and notifications to maintain compliance with applicable victim contact laws. Respond appropriately to inquiries from victims, case witnesses, and members of the public. Process and track restitution requests.
- e) Responding to discovery demands – Ensuring prompt delivery of discovery materials to defendants and defense attorneys to maintain compliance with relevant discovery laws.
- f) Create and maintain prosecutorial case files – Create and maintain prosecutor files to: track compliance with discovery and victim notification issues, keep a record of documents filed in each case, and maintain a record of case facts and defendant criminal history. These files may be kept electronically or in a hard copy format at the election of Erskine Law Practice, and will be kept for the length of time required by law and remain the property of the City of McMinnville.
- g) Processing motions to set aside – Assist in the processing of motions to set aside including interfacing with members of the public or attorneys, drafting correspondence, and completing any associated data entry tasks.
- h) Administrative duties of the City Prosecutor services may be completed remotely. The City of McMinnville will agree to facilitate remote access to any computer systems belonging to the City that are necessary to carry out the functions identified in subsections (a) through (g).
- i) Keep accurate records of and transmit to City quarterly, a summary of the number of monthly hours worked by Erskine administrative staff carrying out the administrative duties of the Prosecutor, and the average actual hourly cost of such administrative staff incurred by Erskine in the performance of such Administrative duties.

**EXHIBIT B**  
**COMPLIANCE WITH APPLICABLE LAW**

**279B.220 Conditions concerning payment, contributions, liens, withholding.** Every public contract shall contain a condition that the contractor shall:

(1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.

(2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.

(3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167. [2003 c.794 §76a]

**279B.230 Condition concerning payment for medical care and providing workers' compensation.**

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

**279B.235 Condition concerning hours of labor; compliance with pay equity provisions; employee discussions of rate of pay or benefits.** (1) Except as provided in subsections (3) to (6) of this section, every public contract subject to this chapter must provide that:

(a) A contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires otherwise, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the contractor shall pay the employee at least time and a half pay for:

(A)(i) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or

(ii) All overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and

(B) All work the employee performs on Saturday and on any legal holiday specified in ORS 279B.020.

(b) The contractor shall comply with the prohibition set forth in ORS 652.220, that compliance is a material element of the contract and that a failure to comply is a breach that entitles the contracting agency to terminate the contract for cause.

(c) The contractor may not prohibit any of the contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

(2) A contractor shall give notice in writing to employees who work on a public contract, either at the time of hire or before work begins 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 contractor may require the employees to work.

(3) A public contract for personal services, as described in ORS 279A.055, must provide that the contractor shall pay the contractor's employees who work under the public contract at least time and a half for all overtime the employees work in excess of 40 hours in any one week, except for employees under a personal services public contract who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(4) A public contract for services at a county fair, or for another event that a county fair board authorizes, must provide that the contractor shall pay employees who work under the public contract at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. A contractor shall notify employees who work under the public contract, either at the time of hire or before work begins on the public 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 contractor may require the employees to work.

(5)(a) Except as provided in subsection (4) of this section, a public contract for services must provide that the contractor shall pay employees at least time and a half pay for work the employees perform under the public contract on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time the employee works in excess of 10 hours in any one

day or in excess of 40 hours in any one week, whichever is greater.

(b) A contractor shall notify in writing employees who work on a public contract for services, either at the time of hire or before work begins on the public 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 contractor may require the employees to work.

(6) This section does not apply to public contracts:

(a) With financial institutions as defined in ORS 706.008.

(b) Made pursuant to the authority of the State Forester or the State Board of Forestry under ORS 477.406 for labor performed in the prevention or suppression of fire.

(c) For goods or personal property. [2003 c.794 §77; 2005 c.103 §8f; 2015 c.454 §4]

**EXHIBIT C  
INSURANCE**

(The Project Manager must answer and initial 2, 3, and 4 below).

During the term of this contract, Contractor will maintain in force at its own expense, each insurance noted below:

1. **Workers Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. (Required of contractors with one or more employees, unless exempt under ORS 656.027).

Required by City                       I am exempt. Signed \_\_\_\_\_

2. **Professional Liability** insurance with a combined single limit of not less than  \$1,200,000,  \$2,000,000, or  \$3,000,000 each claim, incident, or occurrence. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this contract. The coverage must remain in effect for at least  one year  two years after the contract is completed.

Required by City     Not required by City    By: \_\_\_\_\_

3. **General Liability** insurance, on an occurrence basis, with a combined single limit of not less than  \$1,200,000,  \$2,000,000, or  \$3,000,000 each occurrence for Bodily Injury and Property Damage. It must include contractual liability coverage. This coverage will be primary and non-contributory with any other insurance and self-insurance.

Required by City     Not required by City    By: \_\_\_\_\_

4. **Automobile Liability** insurance with a combined single limit, or the equivalent of not less than  \$1,200,000,  \$2,000,000, or  \$3,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles.

Required by City     Not required by City    By: \_\_\_\_\_

5. **Notice of cancellation or change.** There will be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without prior written notice from the Contractor or its insurer(s) to the City.

6. **Certificates of insurance.** As evidence of the insurance coverages required by this contract, the Contractor will furnish acceptable insurance certificates to the City at the time the Contractor returns the signed contracts. For general liability insurance and automobile liability insurance, the certificate will provide that the City, and its agents, officers, and employees, are additional insureds, but only with respect to Contractor's services to be provided under this contract. The certificate will include the cancellation clause, and will include the deductible or retention level. Insuring companies or entities are subject to City acceptance. If requested, complete copies of insurance policies will be provided to the City. The Contractor will be financially responsible for all pertinent deductibles, self-insured retentions, and self-insurance.

**EXHIBIT D**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**  
**(Contractor complete A or B below, Project Manager complete C below.)**

**A. CONTRACTOR IS A CORPORATION**

**CORPORATION CERTIFICATION:** I am authorized to act on behalf of the entity named below, and certify under penalty of perjury that it is a corporation.

Entity	Signature	Date

**B. CONTRACTOR IS INDEPENDENT.**

**Contractor certifies he/she meets the following standards:**

1. The individual or business entity providing services is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results,
2. The individual or business entity is licensed under ORS chapters 671 or 701 if the individual or business entity provides services for which a license is required by ORS chapters 671 or 701,
3. The individual or business entity is responsible for obtaining other licenses or certificates necessary to provide the services,
4. The individual or business entity is customarily engaged in an independently established business, as any three of the following requirements are met **(please check three or more of the following):**
  - \_\_\_ A. The person maintains a business location i) that is separate from the business or work location of the person for whom the services are provided or ii) that is in a portion of the person's residence and that portion is used primarily for the business.
  - \_\_\_ B. The person bears the risk of loss related to the business or the provision of services as shown by factors such as i) the person enters into fixed-price contracts, ii) the person is required to correct defective work, iii) the person warrants the services provided, or iv) the person negotiates indemnification agreements or purchases liability insurance, performance bonds, or errors and omissions insurance.
  - \_\_\_ C. The person provides contracted services for two or more different persons within a 12 month period or the person routinely engages in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
  - \_\_\_ D. The person makes a significant investment in the business, through means such as i) purchasing tools or equipment necessary to provide the services, ii) paying for the premises or facilities where the services are provided, or iii) paying for licenses, certificates, or specialized training required to provide the services.
  - \_\_\_ E. The person has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

Contractor Signature	Date
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(Project Manager complete C below.)

**C. CITY APPROVAL**

**ORS 670.600 Independent contractor standards.** As used in various provisions of ORS chapters 316, 656, 657, 671, and 701, an individual or business entity that performs services for remuneration will be considered to perform the services as an "independent contractor" if the standards of this section are met. The contractor meets the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the services, subject only to the right of the City to specify the desired results,
2. The Contractor is responsible for obtaining licenses under ORS chapters 671 and 701 when these licenses are required to provide the services,

3. The Contractor is responsible for obtaining other licenses or certificates necessary to provide the services,
4. The Contractor has the authority to hire and fire employees to provide or assist in providing the services, and
5. The person is customarily engaged in an independently established business as indicated in B. 4 above.

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Project Manager Signature

Date