

**RESOLUTION NO. URR 11-007**

**A RESOLUTION APPROVING A PERSONAL SERVICES AGREEMENT BETWEEN THE CANBY URBAN RENEWAL AGENCY AND P&C CONSTRUCTION COMPANY TO PROVIDE PRECONSTRUCTION SERVICES FOR THE POLICE FACILITY PROJECT**

**WHEREAS**, the Canby City Council established the Canby Urban Renewal Agency ("Agency") as an urban renewal agency to function within the City pursuant to Ordinance 1032 passed October 6, 1999; and

**WHEREAS**, the Agency has been directed to undertake development of a new Police Facility located on a site at 1175 NW 3<sup>rd</sup> Avenue; and

**WHEREAS**, the Agency issued a Request for Proposals on March 2, 2011, soliciting the services of a Construction Manager/ General Contractor to construct the Police Facility for a Guaranteed Maximum Price ("RFP"). The RFP anticipated a two-stage contracting process for the selected proposer with Stage One including preconstruction services leading to the Agency acceptance of a Guaranteed Maximum Price for the Police Facility; and

**WHEREAS**, P&C Construction Company ("P&C Construction") was selected as the preferred proposer based on the criteria for selection stated in the RFP; and

**WHEREAS**, the Agency staff and P&C Construction have agreed to the terms and conditions for P&C Construction to provide the Stage One preconstruction services as described in the RFP and as expressed in the form of the Personal Services Agreement attached to this Resolution as Exhibit A and by this reference incorporated herein; and

**NOW THEREFORE, IT IS HEREBY RESOLVED** by the Canby Urban Renewal Agency as follows:

1. The Agency authorizes the Personal Services Agreement between the Agency and P&C Construction in the form attached as Exhibit A; and
2. The Executive Director of the Agency is authorized and directed to execute the Personal Services Agreement on behalf of the Agency and to carry out such necessary actions to complete the Agency's obligations under said Personal Services Agreement.

This Resolution shall take effect on April 20, 2011.

ADOPTED this 20<sup>th</sup> day of April 2011, by the Canby Urban Renewal Agency.

---

Richard Ares  
Chair

ATTEST:

---

Kimberly Scheafer, CMC  
City Recorder

**PRECONSTRUCTION SERVICES CONTRACT  
CITY OF CANBY POLICE FACILITY**

This contract ("Contract") is between the City of Canby, Oregon, Urban Renewal Agency, hereafter called "Agency," and P & C Construction Company, Inc.; hereafter called "Contractor". The Agency's Project Manager for this Contract is Robert Bitter, Urban Renewal Project Manager.

**Effective Date and Duration**

This Contract shall become effective on April 20, 2011. This Contract shall expire, unless otherwise terminated or extended, upon acceptance of the Building Package Guaranteed Maximum Price, as described below.

**Statement of Work**

- (a) The statement of work is contained in EXHIBIT A attached hereto and by this reference made a part hereof.
- (b) The schedule for the work is identified in EXHIBIT A.

**Consideration**

Agency will pay the Contractor \$0 for completion of the work. However, the Contractor acknowledges the value of the opportunity to participate as a member of the City of Canby Police Facility Project team during Stage One, and in consideration of the opportunity, agrees to perform the work described herein.

Terms and conditions listed on pages 2 – 5.

---

**CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE**

Name (please print): P & C Construction Company  
Address: 2133 N.W. York Street, Portland, OR 97210  
Federal Tax ID #: 93-0498305 State Tax ID #: \_\_\_\_\_ Business License #: \_\_\_\_\_  
Business Designation: Domestic Corporation

Any payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to contract approval. Information not matching IRS records could subject you to 20 percent backup withholding.

I, the undersigned, agree to perform work outlined in this contract in accordance to the terms and conditions (listed on pages 2-5 and made part of this contract by reference) and the statement of work made part of this contract by reference; hereby certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; and hereby certify I am an independent contractor as defined in ORS 670.600.

Approved by the Contractor: \_\_\_\_\_  
Signature/Title \_\_\_\_\_ Date \_\_\_\_\_

---

**URBAN RENEWAL AGENCY SIGNATURES**

Approved by Purchasing Agent: \_\_\_\_\_  
Director \_\_\_\_\_ Date \_\_\_\_\_

Approved as to Form  
By Legal Counsel: \_\_\_\_\_  
Legal Counsel \_\_\_\_\_ Date \_\_\_\_\_

**CANBY URBAN RENEWAL AGENCY  
STANDARD CONTRACT PROVISIONS FOR  
PROFESSIONAL, TECHNICAL & EXPERT SERVICES (MANDATORY PROVISIONS)**

**1. Access to Records**

The Contractor shall maintain, and the City of Canby Urban Renewal Agency (“Agency”) and its duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the 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 the Agency.

**2. Audits**

(a) The Agency, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement and during the three (3) year period established by section 1, **Access to Records**. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

(b) If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the Agency.

(c) If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the Agency may pursue remedies provided under section 5, **Early Termination of Agreement** and section 7, **Remedies**.

**3. Effective Date and Duration**

The passage of the contract expiration date (as recorded on Page 1) shall not extinguish, prejudice, or limit either party’s right to enforce this contract with respect to any default or defect in performance that has not been cured.

**4. Order of Precedence**

This contract consists of the terms and conditions of this contract, the Request for Proposals for CM/GC Services for City of Canby Police Department Facility, issued by the Agency March 2, 2011 (RFP) and the Contractor’s proposal in response to the RFP. In the event of any apparent or alleged conflict between these various documents, the following order of precedence shall apply to resolve the conflict: a) this contract’s terms and conditions, b) the Agency’s RFP, and c) the Contractor’s proposal in response to the RFP.

**5. Early Termination of Agreement**

(a) The Agency and the Contractor, by mutual written agreement, may terminate this Agreement at any time.

(b) The Agency, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

(c) Either the Agency or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall 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 fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

**6. Payment on Early Termination**

(a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Agreement** hereof, the Agency shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.

(b) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Contractor due to a breach by the Agency, then the Agency shall pay the Contractor as provided in subsection (a) of this section.

(c) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Agency due to a breach by the Contractor, then the Agency shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), **Remedies**.

(d) In the event of early termination all of the Contractor’s work product will become and remain property of the Agency.

**7. Remedies**

(a) In the event of termination under subsection 5(c), **Early Termination of Agreement**, hereof, by the Agency due to a breach by the contractor, then the Agency 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, then the Contractor shall pay the Agency the amount of the reasonable excess.

(b) The remedies provided by the Agency under section 5, **Early Termination of Agreement** and Section 7, **Remedies** for a breach by the Contractor shall not be exclusive. The Agency also shall be entitled to any other equitable and legal remedies that are available.

(c) In the event of breach of this Agreement by the Agency, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 5(c), **Early Termination of Agreement** and section 6(b), **Payment on Early Termination** hereof.

#### **8. Subcontracts and Assignment**

Contractor shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the Agency. Notwithstanding Agency approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the Agency shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

#### **9. Compliance with Applicable Law**

In connection with its activities under this Agreement, Contractor shall comply with all applicable federal, state, and local laws and regulations, including, but not limited to, those stated in this Section 9, all of which are incorporated by this reference. Contractor shall complete Exhibit C, Independent Contractor Certification Statement, which is attached hereto and by this reference made a part hereof.

**9.1 Payment for Labor or Material.** As a condition of this Contract, the Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or material for the prosecution of the work provided for in this Contract.

**9.2 Overtime.** As a condition of this Contract, the Contractor shall comply with all applicable conditions regarding maximum hours of labor and overtime provided by ORS 279B.235.

**9.3 Contributions to the Industrial Accident Fund.** As a condition of this Contract, the Contractor shall pay all contributions or amounts due to the Industrial Accident Fund from the Contractor or the Contractor's subcontractor incurred in the performance of this Contract.

**9.4 Income Tax Withholding.** As a condition of this Contract, the Contractor shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

**9.6 Medical Care for Employees.** As a condition of this Contract, the Contractor 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 the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor 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.

**9.7 Liens and Claims Prohibited.** As a condition of this Contract, the Contractor shall not permit any lien or claim to be filed or prosecuted against the Agency, the City, the State, any County, any municipality, any municipal corporation, or any subdivision thereof, on account of any labor or material furnished pursuant to this Contract.

#### **9a. Indemnity – Claims for Other than Professional Liability**

Contractor shall defend, save, and hold harmless the Agency, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the Agency for any claims or losses arising out of death, or bodily injury to persons, or property damage caused by the negligence of the Agency.

#### **9b. Indemnity – Claims for Professional Liability**

Contractor shall defend, save, and hold harmless the Agency, its officers, agents, and employees, from all claims,

suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the Agency for any claims or losses caused by the negligence of the Agency.

**9c. Indemnity – Standard of Care**

If Contractor's services involve engineering or consulting, the standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation.

**10. Insurance**

Exhibit D is hereby referenced and made a part of this contract.

**11. Ownership of Work Product**

All work products produced by the Contractor under this contract is the exclusive property of the Agency. "Work product" shall include but not be limited to research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form; the Contractor and the Agency intend that such work product shall be deemed "work made for hire" of which the Agency shall be deemed the author. If for any reason a work product is deemed not to be a "work made for hire," the Contractor hereby irrevocably assigns and transfers to the Agency all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the Agency. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications.

**12. Nondiscrimination**

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub I. No. 101-336) including Title II of that Act, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

**13. Successors in Interest**

The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

**14. Severability**

The parties agree that 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, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term of provision held to be invalid.

**15. Waiver**

The failure of the Agency to enforce any provision of this contract shall not constitute a waiver by the Agency of that or any other provision.

**16. Errors**

The Contractor shall 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.

**17. Governing Law**

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Clackamas County, Oregon.

**18. Amendments**

All changes to this contract, including changes to the scope of work and contract amount, must be made by written amendment and approved by the Purchasing Agent to be valid. Any amendment that increases the original contract amount by more than 25% must be approved by the Agency Board to be valid.

**19. Business License**

The Contractor shall obtain a City of Canby business license prior to beginning work under this Agreement. The Contractor shall provide a business license number in the space provided on page one of this Agreement.

Additionally, the Contractor shall pay all fees or taxes due under the Business License Law during the full term of this contract. Failure to be in compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law.

**20. Prohibited Interest**

- (a) No Agency officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- (b) No Agency officer or employee who participated in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

**21. Payment to Vendors and Subcontractors**

The Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the Agency or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the Agency's prior written consent.

**Merger Clause**

THIS CONTRACT WITH ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE IF MADE, SHALL BE EFFECTIVE ONLY IN SPECIFIC INSTANCES AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE OR SHE HAS READ THIS CONTRACT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**OPTIONAL PROVISIONS (selected by Agency Project Manager)**

**22. Arbitration: /  / Applicable /  / Not Applicable (consult with Agency Attorney before finalizing as applicable.**

- (a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the Agency within sixty (60) days or notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Clackamas. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Canby, or Oregon Agency, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for Clackamas County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the Agency. Insofar as the Contractor and the Agency legally may do so, they agree to be bound by the decision of the arbitrator.
- (b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute, and the Agency shall make payments as required by the Agreement for undisputed portions of work.

**23. Progress Reports: /  / Applicable /  / Not Applicable**

The Contractor shall provide monthly progress reports to the Project Manager. If applicable, Exhibit A should list what information the Contractor must include in monthly progress reports.

**24. Contractor's Personnel: /  / Applicable /  / Not Applicable**

The Contractor shall assign the following personnel to do the work in the capacities designated. If applicable, list selected personnel in Exhibit A. The Contractor shall not change personnel assignments without the prior written consent of the Agency.

**25. Subcontractors: /  / Applicable /  / Not Applicable**

The Contractor shall assign the following subcontractors to perform work in the capacities designated. If applicable, list selected subcontractors in Exhibit A. The Contractor shall not change subcontractor assignments without the prior written consent of the Agency.

**EXHIBIT A  
STATEMENT OF THE WORK**

**SCOPE OF WORK**

Attached as Exhibit A-1

**SCHEDULE**

Attached as Exhibit A-2

**CONTRACTOR PERSONNEL**

The Contractor shall assign the following personnel to do the work in the capacities designated:

<b>NAME</b>	<b>ROLE ON PROJECT</b>
Steve Anderson	Project Executive
Carl Grossman	Project Manager
Bruce Heintz	Resource and Safety Manager
Les Jacobson	Chief Estimator
Brad Esler	On-Site Superintendent

**SUBCONTRACTORS [If none, indicate "NONE"]**

The Contractor shall assign the following subcontractors to perform work in the capacities designated:

<b>NAME</b>	<b>ROLE ON PROJECT</b>
NONE	

**COMPENSATION**

Agency shall pay the Contractor \$0 to accomplish the work described in Exhibit A-1. Reimbursable costs are included without additional compensation.

**Exhibit A-1**  
**Stage One Services**

The Contractor's services are the first phase (Stage One) of a two-phase process to enter into and complete the services required by a CM/GC Construction Contract with Guaranteed Maximum Price for the Canby Police Department Facility. The terms used in this description of the Stage One Services have the same meanings as stated in the RFP. During Stage One, the Contractor shall serve as a special consultant to the Project Team and will analyze the design and proposed modifications with the goal of providing the Agency, in the time frame proposed, the highest quality facility within budget.

Specifically, Contractor shall:

1. Consult with the Agency and the Design Team to determine design criteria; such consultation will include evaluation of alternatives from functional, performance, time, and cost perspectives.
2. Consult with the Agency in refining the Project construction budget, and establishing and maintaining a detailed cost model for the work as the design evolves.
3. Review equipment and systems to assist in identifying long lead items, and develop the processes necessary for possible early procurement of such items.
4. Assist in life cycle value analysis from drawings, specifications, other design criteria, and alternative designs as may be requested by the Agency.
5. Provide onsite investigations for the purposes of verification and documentation of the existing conditions to clarify and understand early design elements, and to reduce discovery of unknown conditions during the Stage Two Services. This will reduce the potential of change orders or impacts to the Project budget and schedule.
6. Cost management and control services shall be provided to assist in keeping development costs within the Project budget. These services shall include the following: 1. The analysis, review and recommendation for all Project contracts; 2. Preparation of at least two (2) detailed estimates for probable construction cost (one at the start of the CM/GC Pre-construction services, and one prior to the completion of Construction Documents).
7. With the Design Team, develop a strategy for obtaining building permits in a timely fashion. Meet with building and other regulatory officials as appropriate. Attend all meetings pertaining to permitting, as required. It is anticipated that these functions will continue throughout all Stages of the Project.
8. Prepare a detailed milestone schedule identifying the work to be performed by the Design Team, the Agency, and the Contractor during this Stage. The Contractor shall report progress bi-weekly against this schedule.
9. Review the plans and specifications on a continuous basis and advise the Design Team and the Agency whenever the estimated construction costs are tending to exceed line items from the model budget. In a timely fashion, provide the Design Team with alternatives that will bring the Project cost within budget, without compromising the scope agreed to in the outline specification. Continually update the Project cost.
10. Provide reviews on site of existing conditions for verification of dimensions and elements that would impact the Project schedule or budget, and advise the team of sequencing of work to limit

disruption to the activities around the site.

11. Review architectural, civil, mechanical, electrical, structural and environmental abatement plans as they are developed and make value engineering and constructability recommendations.
12. Review all design and specification documents for completeness, proper details, compliance with program and master plan requirements and adherence to codes or applicable agency requirements, reporting deficiencies, conflicts, and/or clarification questions identified to the Project Team.
13. Refine the schedule for construction of the Site Work and the Building Package.
14. Develop the Guaranteed Maximum Price proposal for the Site Work Package with detailed backup, for Agency's consideration. If the Agency and Contractor agree to a GMP for the Site Work Package, the parties will negotiate, and if successful execute, a CM/GC contract for the construction services for the Site Work.
15. Develop the Guaranteed Maximum Price proposal for the Building Package with detailed backup, for Agency's consideration. If the Agency and Contractor do not agree to a GMP for the Building Package within the time required by the Project schedule, the Agency may terminate the CM/GC contract as to work not included within an approved GMP.

**Exhibit A-2**  
**Schedule for Stage One Services**

Begin Preconstruction Services	April 20, 2011
Contractor submits GMP (Site Work Package)	June 10, 2011 (during Construction Documents)
GMP and CM/GC Contract Finalized (Site Work Package)	June 14, 2011
Notice to Proceed (Site Work Package)	August 16, 2011
Contractor submits GMP (Building Package)	August 11, 2011 (during Construction Documents)
GMP and CM/GC Amendment Finalized (Building Package)	August 17, 2011

**EXHIBIT B**

**INTENTIONALLY DELETED**

**EXHIBIT C**  
**INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT**

**SECTION A**

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

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

\_\_\_\_\_  
Agency Project Manager Signature

\_\_\_\_\_  
Date

**SECTION B**

Independent contractor certifies he/she meets the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor shall check four or more of the following:

\_\_\_\_\_ A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

\_\_\_\_\_ B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

\_\_\_\_\_ C. Telephone listing and service are used for the business that is separate from the personal residence

listing and service used by an individual who performs the labor or services;

- \_\_\_\_\_ D. Labor or services are performed only pursuant to written contracts;
- \_\_\_\_\_ E. Labor or services are performed for two or more different persons within a period of one year; or
- \_\_\_\_\_ F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

**EXHIBIT D**

**INSURANCE**

During the term of this contract Contractor shall 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 and attached; or

Contractor is exempt and has provided Agency satisfactory evidence of such exemption.

Certified by Contractor: \_\_\_\_\_

Signature/Title

---

The Agency must specify required insurance below:

2. **General Liability** insurance on an occurrence basis with a combined single limit of not less than \$2,000,000 each occurrence for bodily injury and property damage. The Liability Insurance coverage shall provide contractual liability coverage for the indemnity required under this contract. The coverage shall name the Agency as Additional Insured with respect to the Contractor's services to be provided under the contract.

Required and attached or Waived: \_\_\_\_\_

3. **Automobile Liability** insurance with a combined single limit per occurrence of not less than \$1,000,000 each occurrence for bodily injury and property damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

Required and attached or Waived: \_\_\_\_\_

4. **Professional Liability** insurance with a combined single limit of not less than \$1,000,000 per claim, incident or occurrence. This is to cover damages caused by the error, omission or negligent acts related to the professional services to be provided under this Contract. If insurance is on a "claims made" basis, the Contractor shall acquire "tail" coverage or continue the same coverage for three years after the completion of the Contract, provided that such coverage is available and economically feasible. If such coverage is not available and economically feasible, the Contractor shall immediately notify the Agency Project Manager.

Required and attached or Waived:  X

5. **On All Types of Insurance.** There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Contractor or its insurer(s) to the Agency.

6. **Certificates of Insurance.** As evidence of the insurance coverage required by this contract, the Contractor shall furnish acceptable insurance certificates to the Agency at the time contractor returns signed contracts. The Certificate shall provide that the insurance shall not terminate or be cancelled without 30 days written notice first being given to the Agency. Insuring companies or entities are subject to Agency acceptance. If requested, complete copies of the insurance policy shall be provided to the Agency. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.