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ATTACHMENT A

MORROW COUNTY PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Contract is between **Morrow** County, a political subdivision of the State of Oregon, hereafter called **County**, and _____ hereafter called **Contractor**. **County's** Contract Administrator for this contract is _____.

1. Effective Date and Duration. This contract shall become effective on _____ or the date at which this Contract has been signed by every party hereto, whichever occurs first. Unless earlier terminated or extended, this Contract shall expire _____. Expiration shall not extinguish or prejudice County's right to enforce this Contract with respect to any breach of a Contractor warranty; or any default or defect in Contractor performance that has not been cured.

2. Statement of Work. Contractor agrees to perform the Work in accordance with the terms and conditions of the Scope of Work attached as Exhibit A.

3. Consideration

a. County agrees to pay Contractor _____ for accomplishing the Work required by the attached Scope of Work as detailed in the Fee Proposal presented by _____ and attached as Exhibit B. Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Contractor's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate of 1% monthly.

4. Contract Documents. This contract consists of this Contract, attached Scope of Work, Fee Proposal, and _____. All attached Exhibits are hereby incorporated by reference.

5. Independent Contractor; Responsibility for Taxes and Withholding

a. Contractor shall perform required Work as an independent contractor. Although the County 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 County cannot and will not control the means or manner of the Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

b. If Contractor is currently performing work for County, the State of Oregon or the Federal Government, Contractor by signature to this Contract declares and certifies that: Contractor's work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing entity (county, state or federal) would prohibit Contractor's activities under this Contract. Contractor is not an "officer", "employee", or "agent" of the County, as those terms are used in ORS 30.265.

c. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any Social Security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

6. Subcontracts and Assignment; Successors and Assigns.

a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract, without County's prior written consent. In addition to any other provisions County may require, Contractor shall include in any permitted subcontract under this Contract a

51 requirement that the subcontractor be bound by sections 6, 10, 11, 15, and 17 of this Contract as if the
52 subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any
53 of its duties or obligations under this Contract.

54 b. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto,
55 and their respective successors and assigns, if any.

56
57 **7. No Third Party Beneficiaries.** County and Contractor are the only parties to this Contract and are the only
58 parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to
59 give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third
60 persons are individually identified by name herein and expressly described as intended beneficiaries of the terms
61 of this Contract.

62 63 **8. Funds Available and Authorized**

64 a. Contractor shall not be compensated for work performed under this contract by any other County or
65 department of the State of Oregon. County has sufficient funds currently available and authorized for
66 expenditure to finance the costs of this Contract.

67 b. County will only pay for completed work that is accepted by County.

68 69 **9. Representations and Warranties**

70 a. **Contractor's Representations and Warranties.** Contractor represents and warrants to County that (1)
71 Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when
72 executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with
73 its terms, (3) the Work under this Contract shall be performed in a good and workmanlike manner and in
74 accordance with the highest professional standards, (4) Contractor shall, at all times during the term of this
75 Contract, be qualified, professionally competent, and duly license to perform the Work.

76
77 b. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any
78 other warranties provided.

79
80 **10. Ownership of Work Product.** All Work products of the Contractor that result from this contract ("the
81 Work Products") are the exclusive property of the County. County and Contractor intend that such Work
82 Products be deemed "works made for hire" of which County shall be deemed the author. If for any reason the
83 Work Products are not deemed "works made for hire", Contractor hereby irrevocably assigns all of its right,
84 title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark,
85 trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such
86 further documents and instruments as County may reasonably request in order to fully vest such right in County.
87 Contractor forever waives any and all rights under 17 USC §106A or any other rights of identification of
88 authorship or rights of approval, restriction or limitation on use or subsequent modifications.

89
90 **11. Indemnity.** Contractor shall defend, save, hold harmless, and indemnify the County, their officers,
91 employees, agents, from and against all claims, suits, or actions, losses, damages, liabilities costs and expenses
92 of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers,
93 employees, subcontractors, or agents under this Contract but only to the extent they are caused by the negligent
94 acts or omissions of the Contractor, its employees and its consultants in the performance of professional services
95 under this Contract.. The Contractor's obligation to indemnify and hold the County and the County's officers
96 and employees harmless does not include a duty to defend and shall be limited to the available proceeds of the
97 insurance coverage required by this agreement.

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12. Insurance. Contractor shall provide the following:

- a. Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000) for each occurrence and Two Million Dollars (\$ 2,000,000) in the aggregate for bodily injury and property damage.
- b. Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor with policy limits of not less than One Million Dollars (\$ 1,000,000) combined single limit for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.
- c. Workers' Compensation at statutory limits.
- d. Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.
- e. Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate.
- f. To the fullest extent permitted by law, the Contractor shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.
- g. The Contractor shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section

13. Termination. This Contract may be terminated at any time by mutual written consent of the parties or with the terminating party providing 48 hours written notice to the other party.

a. Remedies

- i) If County terminates pursuant to this paragraph, Contractor shall be entitled to payment for all services satisfactorily rendered and expenses incurred through the date of termination, provided, that there shall be deducted from such payment the amount of damage, if any, sustained by County due to any breach of the agreement by Contractor.
- ii.) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon County request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the Work.

14. Limitation of Liabilities. EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTIONS 9(a) or 13, NEITHER PARTY SHALL BE LIABLE FOR (I) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES UNDER THE CONTRACT OR (ii) ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT IN ACCORDANCE WITH ITS TERMS.

15. Records Maintenance; Access. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that County and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such

151 longer period as may be required by applicable law, following final payment and termination of this Contract, or
152 until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date
153 is later.

154

155 **16. Compliance with Applicable Law.** Contractor shall comply with all federal, state and local laws, regulations,
156 executive orders and ordinances applicable to the Work under this Contract. Without limiting the generality of
157 the foregoing, Contractor expressly agrees to comply with: (i) Title VI of Civil Rights Act of 1964; (ii) Section V
158 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all
159 regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable
160 requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. County's
161 performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279.312,
162 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.

163

164 **17. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon,
165 Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation
166 Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal
167 capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract.

168

169 **18. Force Majeure.** Neither County nor Contractor shall be held responsible for delay or default caused by
170 fire, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable
171 control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or
172 default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this
173 contract.

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175 **19. Survival.** All rights and obligations shall cease upon termination or expiration of this Contract, except for
176 the rights and obligations set forth in Sections 1, 9, 10, 11, 13, 14, 15, 19, and 26.

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178 **20. Time is of the Essence.** Contractor agrees that time is of the essence under this Contract.

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180 **21. Notice.** Except as otherwise expressly provided in this Contract, any communication between the parties
181 hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the
182 same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this
183 Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or
184 notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or
185 notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the
186 transmitting machine.

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188 **22. Severability.** The parties agree that if any term or provision of this contract is declared by a court of
189 competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions
190 shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the
191 contract did not contain the particular term or provision held to be invalid.

192

193 **23. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together
194 shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the
195 same counterpart. Each copy of the Contract so executed shall constitute an original.

196

197 **24. Disclosure of Social Security Number.** Contractor must provide Contractor's Social Security number
198 unless Contractor provides a federal tax ID number. This number is requested pursuant to ORS 305.385, OAR
199 125-20-410(3) and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used
200 for the administration of state, federal and local tax laws.

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25. Governing Law, Venue, Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Morrow County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

26. Merger. This contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR

By: _____ Title: _____ Date: _____
Phone number: _____
Address: _____

COUNTY
MORROW COUNTY BOARD OF COMMISSIONERS

Date: _____

Don Russell, Chair

Jim Doherty, Commissioner

Melissa Lindsay, Commissioner

APPROVED AS TO FORM:

County Counsel