

**POLK COUNTY BOARD OF COMMISSIONERS**

**DATE:** May 29, 2024  
**TIME:** 9:00 a.m.  
**PLACE:** Polk County Courthouse, Dallas, Oregon

**THE LOCATION OF THIS MEETING IS ADA ACCESSIBLE. PLEASE ADVISE THE BOARD OF COMMISSIONERS AT (503-623-8173), AT LEAST 24 HOURS IN ADVANCE, OF ANY SPECIAL ACCOMMODATIONS NEEDED TO ATTEND OR TO PARTICIPATE IN THE MEETING VIRTUALLY.**

**PAGE:** **AGENDA ITEMS**

- 1. CALL TO ORDER AND NOTE OF ATTENDANCE**
- 2. ANNOUNCEMENTS**
  - (a)** Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principal subjects anticipated to be considered. Pursuant to ORS 192.640, the Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00am on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.
  - (b)** The Grand Ronde Sanitary District Board is meeting on May 29, 2024 at 9:15 a.m. The meeting will take place in the Polk County Courthouse, 850 Main Street, Dallas, OR, 97338.
- 3. COMMENTS (for items not on this agenda and limited to 3 minutes)**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF THE MINUTES FROM May 22, 2024**
- 6. APPROVAL OF CONSENT CALENDAR**

**CONSENT CALENDAR**

- a)** Polk County Contract No. 24-77, Service Contract  
(Austin McGuigan, Community Development Director)
- b)** Polk County Contract No. 24-78, Service Contract  
(Austin McGuigan, Community Development Director)

**THE BOARD OF COMMISSIONERS WILL MEET IN EXECUTIVE SESSION  
PURSUANT TO ORS 192.660.**

**ADJOURNMENT**

POLK COUNTY PUBLIC MEETINGS AND PUBLIC HEARINGS  
GUIDELINE FOR CITIZENS

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REGULAR MEETING AGENDA

Regular meetings of the Polk County Board of Commissioners convene at 9 a.m. each Wednesday morning. Any person wishing to bring a matter before the Board at one of these meetings may do so by mailing or delivering written notice, concisely describing the nature of the item, to the Board of Commissioners, Polk County Courthouse, Dallas, Oregon 97338, by noon on the preceding Thursday. Unless otherwise announced, meetings are held in the Main Conference Room of the Courthouse.

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APPEARANCE OF INTERESTED CITIZENS

The Board sets aside a time at each regular meeting for comment by the public on subjects not appearing on the Agenda. Individuals may come forward and make any statement they wish, but not to exceed three (3) minutes in length, except as is required to give concise answers to questions from Board members. If the subject will require a lengthier presentation, or merits inclusion as an item on the Agenda of a future meeting, the Board shall schedule it accordingly.

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PUBLIC HEARING FORMAT  
Land Use

1. Chairman opens hearing.
  - a. Reading of hearing request or appeal statement.
  - b. Call for abstentions (ex parte contact or conflict of interest).
2. County staff presents background, summary and its recommendation (20-minute limit).
3. Applicant (Appellant) presents his/her case (15-minute limit).
4. Public testimony. Note that all testimony and evidence must be directed toward the applicable factual and legal criteria as identified in the record and/or during this hearing. Do not repeat previous testimony. Simply note for the record that you are in agreement with that earlier testimony. Your time to present testimony is limited. FAILURE TO RAISE AN ISSUE IN THIS HEARING, IN PERSON OR BY LETTER, OR FAILURE TO PROVIDE ADEQUATE SPECIFICITY TO AFFORD THE BOARD AN OPPORTUNITY TO RESPOND TO THE ISSUE MAY PRECLUDE LATER APPEAL TO LUBA ON THAT ISSUE.
  - a. Individuals in favor of the application or appeal.
  - b. Individuals against the application or appeal. At the discretion of the Chairman, an attorney, consultant, or other designated representative of two or more individuals may be allowed the combined time for each represented individual who does not speak, not to exceed 20 minutes. The Chairman may require proof of designation.
5. Rebuttal by Applicant (Appellant) (10-minute limit).
6. Questions from Board (discussion limited to individuals questioned by the Board).
  - a. Staff.
  - b. Applicant (Appellant).
  - c. Individuals testifying.
7. Chairman closes hearing and announces closing of Record.
8. Chairman announces date for deliberation and decision.
9. The Board's decision is deemed the final decision of Polk County. It may be appealed to LUBA within 21 days of its issuance in written form. The address and phone number of LUBA may be obtained from the Polk County Community Development Department and will also appear on the Notice of Decision which will be mailed to all persons who testify, submit comments, or print their name and address on the hearing attendance sheet at the back of the hearing room.



# POLK COUNTY

POLK COUNTY COURTHOUSE ★ DALLAS, OREGON 97338  
(503) 623-9237

COMMUNITY DEVELOPMENT

AUSTIN MCGUIGAN  
Director

## MEMORANDUM

**TO:** Board of Commissioners  
**FROM:** Austin McGuigan, Community Development Director  
**DATE:** May 21, 2024  
**SUBJECT:** Personal Services Contract  
**Wednesday – May 29, 2024 Consent Agenda**

### RECOMMENDATION:

Approve the contract for code enforcement services from Jerry Jackson?

### ISSUE:

Should the Polk County adopt the 2024-2025 contract with Jerry Jackson to provide code enforcement services?

### BACKGROUND:

The Polk County Code of Ordinances requires Polk County to provide code enforcement services. Jerry Jackson has provided Polk County those services since 2008. The contract proposed for fiscal year 2024-2025 includes an approximately 4% increase in the monthly retainer over the previous contracted rates.

### DISCUSSION/ALTERNATIVES:

1. Approve amended personal services contract;
2. Do not approve the amended personal services contract; or
3. Other, as determined by the Board.

### SUMMARY:

The current contract with Jerry Jackson expires on June 30, 2024. This contract would expire on June 30, 2025.

### FISCAL IMPACTS:

The 2024-2025 Community Development budget provides for code enforcement services at the negotiated rate in the Contract.

## PERSONAL SERVICES CONTRACT

This Agreement is made and entered into by and between Polk County, a political subdivision of the State of Oregon, and Jerry Jackson, hereafter referred to as "Contractor".

Polk County is authorized to obtain, by contract, services necessary to conduct its operation. Contractor has available, or can cause to be provided, the facilities, skills and staff required for the performance of these services.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties above-mentioned, for and in consideration of the mutual covenants stated as follows:

1.0 Effective date. This Agreement is effective when signed by Contractor and County.

2.0 Contractor's services. Contractor shall perform the necessary services to conduct the program(s) more fully described in Appendix "B", attached hereto and by this reference incorporated into this Agreement. Services shall be performed in accordance with a schedule approved by Polk County. Contractor agrees to do all things in accordance with applicable plans, specifications and any bid proposal attached as appendices hereto, in accordance with such alterations and modifications as may be made by Polk County.

3.0 Assignment. Neither party shall assign, sublet or transfer any interest in or duty under this agreement without the written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented.

4.0 Laws and regulations. Polk County and Contractor agree to comply with the ordinances and regulations of Polk County; applicable provisions in any contract between Polk County and the State of Oregon relating to the services to be provided under this Agreement by the Contractor; and all provisions of Federal and State law, rules and regulations relating to Contractor's performance of services under this Agreement. Contractor further expressly agrees to comply, as applicable, with the statutory language contained in Appendix "A".

In the case of an act or duty of Polk County, imposed upon Polk County by the State of Oregon, which, by the nature of this Agreement, Polk County determines to be within the scope of this Agreement and is to be performed by Contractor, Contractor shall perform such act or duty on behalf of Polk County.

5.0 Conflict of Interest. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. Contractor further covenants that in the performance of this contract no

person having any such interest shall be employed.

6.0 Monitoring. Contractor agrees that time slips and billings, if any, that pertain to services under this Agreement shall be open for inspection by Polk County's agents at any reasonable time during business hours.

7.0 Payments/Consideration. Polk County shall pay Contractor pursuant to the terms and conditions stated in the attached Appendix "C".

8.0 Withholding payments; liquidated damages. Notwithstanding any other payment provision of this Agreement, if contractor fails to submit required reports when due, or fails to perform or document the performance of contracted services, Polk County may immediately withhold payments under this Agreement.

9.0 Termination. All or part of this Agreement may be terminated by mutual consent of both parties, or by either party at any time for convenience after 30 days notice in writing. Polk County may terminate all or part of this Agreement for any one or more of the reasons specified below:

- 9.1 After 10 days notice, if funding to Polk County from Federal, State or other sources is not obtained or is not continued at levels sufficient to allow for purchase of the indicated quantity of services. Polk County will give more notice whenever possible.
- 9.2 After 30 days notice, if Federal or State regulations are changed in such a way that services no longer are allowable under this Agreement.
- 9.3 Immediately, on notice of denial, revocation or non-renewal of any letter of approval, license or certificate required by law, rule or regulation to be held by Contractor to provide a service under this Agreement.
- 9.4 Immediately, if Contractor fails to provide services, or fails to meet any performance standard as specified by Polk County in this Agreement (or subsequent modifications of this Agreement) within the time therein specified, or any extensions thereof.
- 9.5 Immediately, if Polk County has evidence that Contractor has endangered or is endangering the health and safety of clients, residents, staff or the public.
- 9.6 Immediately, upon failure of Contractor to comply with the provisions of this Agreement and all applicable Federal, State and local laws, rules and regulations.
- 9.7 Termination, or the withholding of payments or reduction of obligation under

Section 7.0, shall be without prejudice to any other obligation or liability of either party accrued prior thereto.

10.0 Independent contractor. Contractor is engaged as an Independent Contractor.

10.1 Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Agreement.

10.2 This Agreement is not intended to entitle Contractor to any benefits generally granted to Polk County employees. By way of illustration, but without limitation, the benefits which are not intended to be extended by this Agreement to the Contractor are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation or retirement benefits.

10.3 Contractor is an Independent Contractor for purposes of the Workers' Compensation Law (ORS Chapter 656) and is solely liable for any Workers' Compensation coverage under this Agreement. If Contractor has the assistance of other persons in the performance of this Agreement, Contractor shall qualify and remain qualified for the term of this Agreement as an insured employer under ORS 656.407.

11.0 Delegation and reports. Contractor shall not delegate the responsibility for providing services under this Agreement to any other individual or agency, and shall provide Polk County with periodic reports at the frequency and with the information required by Polk County.

12.0 Constraints. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, Oregon Constitution, and is contingent upon funds being available and appropriated therefor. Any provisions in this Agreement which would conflict with law are deemed inoperative to that extent. The statutory provisions set out in Appendix "A" of this Agreement, as applicable, constitute a part of this Agreement. It is understood by both parties that no commitments have been or are made by either party beyond the end of this Agreement.

13.0 Hold harmless / Insurance. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all of its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. Contractor is responsible for injury to persons or property caused directly or indirectly by reason of

activities by Contractor, its subcontractor or the employees of either, in the performance of this Agreement. Contractor further agrees to indemnify, save harmless and defend Polk County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, attorneys fees, losses and expenses in any manner resulting from, arising out of, or connected with any such damage and/or injury that may be asserted by any person or entity in connection with the performance of work described in this contract, except liability arising out of the sole negligence of the County and its employees. Such indemnification shall also cover claims brought against Polk County under state or federal workers compensation laws. If any aspect of this indemnity provision shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this provision. Contractor shall at all time maintain automobile insurance with state-mandated limits and also general liability insurance with minimum limits of \$500,000. In all applicable instances, Contractor's insurance shall be primary.

14.0 Settlement of disputes. Differences between a Contractor and Polk County, or between contractors, will be resolved when possible at appropriate management levels. Polk County has ultimate responsibility and authority for resolution of disagreements among subcontract agencies.

15.0 Non-discrimination. Contractor agrees that no person, on grounds of race, color, creed, national origin, sex, marital status or age, will suffer discrimination in the performance of this Agreement when employed by Contractor.

16.0 Attorney fees. If an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any terms of this Agreement, each party is responsible for its own attorney's fees, expenses, costs and disbursements for the action, suit, proceeding or appeal.

17.0 Disputes. All disputes, and all claims for alleged breach of contract shall, within ten days of the commencement of dispute, be presented in writing to Polk County for decision; but in the meanwhile, Contractor shall proceed with the work as directed.

17.1 Contractor shall submit in detail the claim and proof thereof. Polk County, with reasonable promptness, shall render its decision to the Contractor in writing.

17.2 If Contractor does not agree with any decision of Polk County, Contractor shall except that decision from the final release.

17.3 If Contractor has (1) given notice of any dispute within the limit stated above; (2) taken exception to Polk County's decision in the release; and (3) brought suit by way

of Arbitration Proceeding pursuant to ORS 36.300 through 36.365 within 120 days after receipt of final payment under this contract or within six months of a written request by Polk County that Contractor submit a final voucher and release, whichever time is the lesser; then Polk County's decision shall not be final and conclusive but the dispute shall be tried in arbitration on its merits. If the above conditions precedent have not been met, Contractor agrees that his noncompliance with the conditions precedent constitutes a waiver of right to assert a claim.

18.0 Captions. The headings or captions in this Agreement are solely for convenience of the reader, and do not have legal effect.

19.0 Choice of Law. This Agreement shall be governed by the laws of the State of Oregon.

20.0 Venue. Venue relating to this Agreement shall be in the Circuit Court of the State of Oregon for Polk County, located in Dallas, Oregon.

21.0 Severability. If any provision of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

22.0 Confidentiality. Contractor understands and agrees that some records that will be made available are or may be considered confidential under ORS 308.209 and 308.413. Contractor agrees to comply with any and all confidentiality laws and regulations and will sign a confidentiality agreement if provided by Polk County.


23.0 Term of Agreement. This agreement shall expire June 30, 2025.

**THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONTRACTOR, BY HIS SIGNATURE BELOW,**



HEREBY ACKNOWLEDGES THAT HE HAS READ THIS AGREEMENT,  
UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

DATED this 21<sup>ST</sup> day of May, 2024.

  
Contractor  
42-1616255  
Tax I.D. Number

APPROVED by the Polk County Board of Commissioners at the regular meeting on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2024.

POLK COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

Approved as to Form:

\_\_\_\_\_  
County Counsel

## APPENDIX "A"

### CLAUSES REQUIRED BY OREGON LAW FOR PERSONAL SERVICE CONTRACTS

A. Payment of Subcontractors, Industrial Accident Fund Contributions, Liens and Withholding Taxes:

1. Contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in this contract.
2. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, Municipal Corporation or subdivisions thereof, on account of any labor or material furnished.
4. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

B. Payment of Claims by County: If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing Polk County may pay such claim to the person furnishing the labor or services and charge the amount of payment against funds due or to become due the Contractor by reason of this contract. Payment of a claim in this manner shall not relieve the contractor or contractor's surety from obligation with respect to any unpaid claims.

C. Hours of Labor: All laborers providing contract services shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC section 201 to 209 from receiving overtime.

D. Payment for Medical Care: Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees for such 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 such service.

E. Providing Workers' Compensation Insurance: All employers working under this contract are subject employers who will comply with ORS 656.017.

F. Health Care Benefits for Employees: The Contractor shall provide health care benefits to all employees who are performing services previously performed by public employees if the conditions specified in ORS 653.767 require such payment. Benefits must equal or exceed those benefits specified in ORS 279.315(3). This clause does not apply to contracts for temporary, non-ongoing or nonrecurring contracts.

G. Americans with Disabilities Act Compliance: Contractor agrees that Contractor will comply and does comply with all relevant provisions of the Americans with Disabilities Act, to the extent required by the Act.

## **APPENDIX "B"**

Contractor shall serve as Code Enforcement Officer for Polk County with the following duties:

1. Conduct nuisance complaint inspections and re-inspections
2. Conduct change of use inspections on structures that do not require permits from the building division
3. Prepare photographic and documentation of inspections
4. Prepare compliance letters as requested by Community Development Director (CDD) or County Counsel
5. Appear at legal proceedings as requested
6. Telephonic availability between 8 a.m. and 5:00 p.m., M – F, and other times on an emergency basis
7. Office availability one and ½ days per week

## APPENDIX "C"

Payment of Contractor. Subject to availability of funds, County shall pay Contractor each month (calculated on a 30 day basis) for rendering the services listed in this Agreement as set forth in Appendix "B" as follows:

### Retainer

\$1950.00

Special Assignments: as agreed at time of assignment



# POLK COUNTY

POLK COUNTY COURTHOUSE ★ DALLAS, OREGON 97338  
(503) 623-9237

## COMMUNITY DEVELOPMENT

AUSTIN M<sup>C</sup>GUIGAN  
Director

### MEMORANDUM

**TO:** Board of Commissioners  
**FROM:** Austin McGuigan, Community Development Director  
**DATE:** May 21, 2024  
**SUBJECT:** Personal Services Contract  
**Wednesday Agenda – May 29, 2024 Consent Agenda**

#### RECOMMENDATION:

Approve contract for Hearings Officer services with Leslie Howell.

#### ISSUE:

Should Polk County enter into an agreement with Leslie Howell to provide Hearings Officer services at the negotiated rates?

#### BACKGROUND:

The Polk County Code of Ordinances and Zoning Ordinance require Polk County to provide a Hearings Officer for certain applications and proceedings. Leslie Howell has served as the Polk County Hearings Officer since 2016. The contract proposed for fiscal year 2024-2025 would include approximately a 4% increase in the hearing rate over the previous contracted rates in order to adjust for the increased costs of providing service.

#### DISCUSSION/ALTERNATIVES:

1. Approve personal services contract;
2. Do not approve personal services contract; or
3. Other, as determined by the Board.

#### SUMMARY:

This contract would allow the Community Development Department to process current applications that require a Hearings Officer.

#### FISCAL IMPACTS:

The 2024-2025 Community Development budget provides for primary Hearings Officer services at the negotiated rates in Appendix C of the Contract.

## PERSONAL SERVICES CONTRACT

This Agreement is made and entered into by and between Polk County, a political subdivision of the State of Oregon, and Leslie Howell, hereafter referred to as "Contractor."

Polk County is authorized to obtain, by contract, services necessary to conduct its operation. Contractor has available, or can cause to be provided, the facilities, skills and staff required for the performance of these services.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties above-mentioned, for and in consideration of the mutual covenants stated as follows:

1.0 Effective date. This Agreement is effective when signed by Contractor and County.

2.0 Contractor's services. Contractor shall perform the necessary services to conduct the program(s) more fully described in Appendix "B", attached hereto and by this reference incorporated into this Agreement. Services shall be performed in accordance with a schedule approved by Polk County.

3.0 Assignment. Neither party shall assign, sublet or transfer any interest in or duty under this agreement without the written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented.

4.0 Laws and regulations. Polk County and Contractor agree to comply with the ordinances and regulations of Polk County; applicable provisions in any contract between Polk County and the State of Oregon relating to the services to be provided under this Agreement by the Contractor; and all provisions of Federal and State law, rules and regulations relating to Contractor's performance of services under this Agreement. Contractor further expressly agrees to comply, as applicable, with the statutory language contained in Appendix "A".

In the case of an act or duty of Polk County, imposed upon Polk County by the State of Oregon, which, by the nature of this Agreement, Polk County determines to be within the scope of this Agreement and is to be performed by Contractor, Contractor shall perform such act or duty on behalf of Polk County.

5.0 Conflict of Interest. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. Contractor further covenants that in the performance of this contract no person having any such interest shall be employed.

6.0 Monitoring. Contractor agrees that time slips and billings that pertain to services under this Agreement shall be open for inspection by Polk County's agents at any reasonable time

during business hours. All hearings records and exhibits, time slips and billings shall be provided promptly after a decision is rendered.

7.0 Payments/Consideration. Polk County shall pay Contractor pursuant to the terms and conditions stated in the attached Appendix "C".

8.0 Withholding payments; liquidated damages. Notwithstanding any other payment provision of this Agreement, if contractor fails to submit required reports when due, or fails to perform or document the performance of contracted services, Polk County may immediately withhold payments under this Agreement.

9.0 Termination. All or part of this Agreement may be terminated by mutual consent of both parties, or by either party at any time for convenience after 30 days notice in writing. Polk County may terminate all or part of this Agreement for any one or more of the reasons specified below:

9.1 After 10 days notice, if funding to Polk County from Federal, State or other sources is not obtained or is not continued at levels sufficient to allow for purchase of the indicated quantity of services. Polk County will give more notice whenever possible.

9.2 After 30 days notice, if Federal or State regulations are changed in such a way that services no longer are allowable under this Agreement.

9.3 Immediately, on notice of denial, revocation or non-renewal of any letter of approval, license or certificate required by law, rule or regulation to be held by Contractor to provide a service under this Agreement.

9.4 Immediately, if Contractor fails to provide services, or fails to meet any performance standard as specified by Polk County in this Agreement (or subsequent modifications of this Agreement) within the time therein specified, or any extensions thereof.

9.5 Immediately, if Polk County has evidence that Contractor has endangered or is endangering the health and safety of clients, residents, staff or the public.

9.6 Immediately, upon failure of Contractor to comply with the provisions of this Agreement and all applicable Federal, State and local laws, rules and regulations.

9.7 Termination, or the withholding of payments or reduction of obligation under Section 6.0, shall be without prejudice to any other obligation or liability of either party accrued prior thereto.

10.0 Independent contractor. Contractor is engaged as an Independent Contractor.

10.1 Contractor will be solely responsible for payment of any Federal or State taxes



required as a result of this Agreement.

10.2 This Agreement is not intended to entitle Contractor to any benefits generally granted to Polk County employees. By way of illustration, but without limitation, the benefits which are not intended to be extended by this Agreement to the Contractor are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation or retirement benefits.

10.3 Contractor is an Independent Contractor for purposes of the Workers' Compensation Law (ORS Chapter 656) and is solely liable for any Workers' Compensation coverage under this Agreement. If Contractor has the assistance of other persons in the performance of this Agreement, Contractor shall qualify and remain qualified for the term of this Agreement as an insured employer under ORS 656.407. If Contractor performs this Agreement without the assistance of any other person, Contractor shall execute a Joint Declaration with Polk County's Workers' Compensation carrier absolving Polk County of any and all liability as provided in ORS 656.029.

11.0 Delegation and reports. Contractor shall not delegate the responsibility for providing services under this Agreement to any other individual or agency, and shall provide Polk County with periodic reports at the frequency and with the information required by Polk County.

12.0 Constraints. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, Oregon Constitution, and is contingent upon funds being available and appropriated therefor. Any provisions in this Agreement which would conflict with law are deemed inoperative to that extent. The statutory provisions set out in Appendix "A" of this Agreement, as applicable, constitute a part of this Agreement. It is understood by both parties that no commitments have been or are made by either party beyond the end of this Agreement.

13.0 Hold harmless. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all of its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. Contractor is responsible for injury to persons or property caused directly or indirectly by reason of activities by Contractor, its subcontractor or the employees of either, in the performance of this Agreement. Contractor further agrees to indemnify, save harmless and defend Polk County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, attorneys fees, losses and

expenses in any manner resulting from, arising out of, or connected with any such damage and/or injury that may be asserted by any person or entity in connection with the performance of work described in this contract, except liability arising out of the sole negligence of the County and its employees. Such indemnification shall also cover claims brought against Polk County under state or federal workers compensation laws. If any aspect of this indemnity provision shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this provision.

14.0 Settlement of disputes. Differences between a Contractor and Polk County, or between contractors, will be resolved when possible at appropriate management levels. Polk County has ultimate responsibility and authority for resolution of disagreements among subcontract agencies.

15.0 Non-discrimination. Contractor agrees that no person, on grounds of race, color, creed, national origin, sex, marital status or age, will suffer discrimination in the performance of this Agreement when employed by Contractor.

16.0 Attorney fees. If an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any terms of this Agreement, each party is responsible for its own attorney's fees, expenses, costs and disbursements for the action, suit, proceeding or appeal.

17.0 Disputes. All disputes, and all claims for alleged breach of contract shall, within ten days of the commencement of dispute, be presented in writing to Polk County for decision; but in the meanwhile, Contractor shall proceed with the work as directed.

17.1 Contractor shall submit in detail the claim and proof thereof. Polk County, with reasonable promptness, shall render its decision to the Contractor in writing.

17.2 If Contractor does not agree with any decision of Polk County, Contractor shall except that decision from the final release.

17.3 If Contractor has (1) given notice of any dispute within the limit stated above; (2) taken exception to Polk County's decision in the release; and (3) brought suit by way of Arbitration Proceeding pursuant to ORS 36.300 through 36.365 within 120 days after receipt of final payment under this contract or within six months of a written request by Polk County that Contractor submit a final voucher and release, whichever time is the lesser; then Polk County's decision shall not be final and conclusive but the dispute shall be tried in arbitration on its merits. If the above conditions precedent have not been met, Contractor agrees that her noncompliance with the conditions precedent constitutes a waiver of right to assert a claim.

18.0 Captions. The headings or captions in this Agreement are solely for convenience of the reader, and do not have legal effect.

19.0 Choice of Law. This Agreement shall be governed by the laws of the State of Oregon.

20.0 Venue. Venue relating to this Agreement shall be in the district or circuit courts of the State of Oregon for Polk County, located in Dallas, Oregon.

21.0 Severability. If any provision of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

22.0 Confidentiality. Contractor understands and agrees that some records that will be made available are or may be considered confidential under ORS 308.209 and 308.413. Contractor agrees to comply with any and all confidentiality laws and regulations and will sign a confidentiality agreement if provided by Polk County.

23.0 Term of Agreement. This agreement shall expire June 30, 2025.

**THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONTRACTOR, BY HIS SIGNATURE BELOW, HEREBY ACKNOWLEDGES THAT SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

SIGNATURE PAGE

DATED this 21st day of May, 2024.

BY: Leslie Howell  
Contractor

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

POLK COUNTY:

BY: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
County Counsel

## **APPENDIX "A"**

### **CLAUSES REQUIRED BY OREGON LAW FOR PERSONAL SERVICE CONTRACTS**

#### **Payment of Subcontractors, Industrial Accident Fund Contributions, Liens and Withholding Taxes**

Contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in this contract.

Contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.

Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivisions thereof, on account of any labor or material furnished.

Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

#### **Payment of Claims by County**

If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing Polk County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this contract. Payment of a claim in this manner shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

#### **Hours of Labor**

All laborers providing contract services shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC section 201 to 209 from receiving overtime.

#### **Payment for Medical Care**

Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees for such 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.

**Providing Workers' Compensation Insurance**

All employers working under this contract are subject employers who will comply with ORS 656.017.

**Americans with Disabilities Act Compliance**

Contractor agrees that Contractor will comply and does comply with all relevant provisions of the Americans with Disabilities Act, to the extent required by the Act.

## **APPENDIX "B"**

Contractor shall serve as the primary Hearing's Officer for Polk County with the following duties:

1. Conduct land use Public Hearings on the second and third Tuesday of each month at 6 pm, or other days/times, as coordinated and scheduled between Polk County and Contractor. Conduct solid waste related and all other Public Hearings as coordinated and scheduled between Polk County and Contractor. Polk County reserves the right, after consultation with Contractor, to adjust monthly schedules depending upon County needs.
2. Review and hear all Public Hearings placed on each monthly Hearings Officer meeting agenda by the Community Development Director or Chairman of the Board of Commissioners.
3. Provide written decisions on each Public Hearing, setting out findings, conclusions and recommendations.
4. Provide these decisions in a timely fashion.

Polk County shall provide support staff to assist in notices to applicants, staff reports and secretarial services for report writing.

## APPENDIX "C"

**Payment of Contractor.** Subject to availability of funds, County shall pay Contractor each month for rendering the services listed in this Agreement as set forth in Appendix "B" as follows:

For a hearing(s) to review Zone and Comprehensive Plan changes, the Contractor will be paid \$2,125. In addition, if a public hearing under this section is continued more than once (i.e., there are more than two separate public meetings), the Contractor will be paid an additional \$545.00.

For all other hearings, such as variances, appeals of staff decisions, rate-increase hearings to set or increase uniform rates for all collection franchises, code enforcement hearings, the Contractor will be paid \$1,170.00 per hearing.

County may schedule more than one hearing night in any calendar month to provide the public and County agencies opportunity for prompter hearings.