



YAMHILL COUNTY PERSONAL SERVICES CONTRACT

This is an agreement ("Agreement") by and between YAMHILL COUNTY, OREGON, a political subdivision of the State of Oregon, hereinafter called COUNTY, and ~~[MEDIATOR NAME]~~ *Kathleen Horgan*, hereinafter called CONTRACTOR.

WHEREAS, COUNTY has need for services of an individual with the particular training, ability, knowledge and experience possessed by CONTRACTOR.

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree as follows:

1. TERM OF CONTRACT; TERMINATION: This Agreement shall become effective *February 1st,* 2021, and, unless terminated in accordance with this Agreement, shall terminate on June 30, 2022. Thereafter, it shall be automatically renewed for successive one year terms beginning July 1, 2022 unless terminated in accordance with this Agreement. Notwithstanding the foregoing, COUNTY retains the right to amend, modify, or terminate this Agreement upon thirty (30) days written notice to CONTRACTOR in the event the state court filing fees which fund this Agreement become insufficient to continue the Agreement. In addition, either party may terminate this Agreement on sixty days written notice to the other party. Termination shall not excuse liabilities incurred prior to the termination date. Amendment, modification, or termination of the Agreement for non-appropriation shall not be a default on the part of the COUNTY.
2. SERVICES TO BE PROVIDED; CONFIDENTIALITY: CONTRACTOR will provide domestic relations mediation in cases referred to him/her by the Yamhill County Circuit Court (the "Court"), pursuant to ORS 107.755 to 107.795 (the "Services"). All Services that are provided pursuant to this Agreement shall conform to the Yamhill County Circuit Court's Rules of Mediation Services in effect at the time Services are provided. CONTRACTOR shall be responsible for costs related to providing the Services required by this Agreement, except as specifically provided to the contrary. All mediation proceedings subject to this Agreement shall be held in private and all persons other than mediation services personnel, the parties, their counsel, and children of the parties shall be excluded. All verbal or written communications made at mediation proceedings shall be confidential.
3. PAYMENT: \$85.00 per hour, for satisfactory performance of Services ordered by the Court, not to exceed five (5) hours per original case filing for Services, documentation, and administrative time. Also, not to exceed four (4) hours for post general judgment case mediation. "No-show" appointments will be billed at the rate of \$85.00 for one hour and will be counted against the case mediation time. Billing will occur to the closest quarter hour. A judge, by order, may increase the required mediation hours in any case. No mediation hours will be paid for mediation time prior to the Court appointing the mediator. CONTRACTOR

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shall submit its billing on or before the last Monday of the month for the preceding month, payable within 15 days of receipt and approval of the signed statement from Mediator. The billing shall include the number of hours spent on each case during the billing period. Billing will be submitted on the form provided in Attachment A. This form is not intended to replace requirements in section 15 of this Agreement. The County's obligation to pay the monthly sum shall be based upon satisfactory compliance with the terms of this Agreement.

4. ASSIGNMENT/DELEGATION: Neither party shall assign, subcontract or transfer any interest in or duty under this Agreement without the prior 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.
5. STATUS OF CONTRACTOR: The parties intend that CONTRACTOR, in performing the Services specified in this Agreement, shall act as an independent contractor. Although COUNTY reserves the right to (i) determine and modify the delivery of schedule for work and Services to be performed and (ii) evaluate the quality of the completed performance, only CONTRACTOR shall have the control of the work and Services and the manner in which it is performed. CONTRACTOR is not to be considered an agent or employee of the COUNTY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits COUNTY provides its employees.

CONTRACTOR will not be eligible for any federal social security, state workers' compensation, unemployment insurance, or Public Employees Retirement System benefits from amounts paid under this Agreement, except as a self-employed individual. If this payment is to be charged against Federal funds, CONTRACTOR certifies that it is not currently employed by the Federal government and the amount charged does not exceed its normal charge for the type of service provided.

COUNTY will report the total amount of payments to CONTRACTOR, including any expenses, in accordance with Federal Internal Revenue Service and State of Oregon Department of Revenue regulations. CONTRACTOR shall be responsible for any federal or State taxes applicable to amounts paid under this Agreement. COUNTY shall not be responsible for withholding taxes with respect to CONTRACTOR's compensation and CONTRACTOR shall have no claim against the COUNTY for employee benefits of any kind. CONTRACTOR will be solely responsible for payment of any federal or state taxes required as a result of this Agreement.

6. WARRANTY: COUNTY has relied upon representations by CONTRACTOR regarding its professional ability and training as a material inducement to enter into this Agreement. CONTRACTOR represents and warrants that all 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 of such warranty.
7. INDEMNIFICATION. CONTRACTOR shall hold harmless, indemnify, and defend the State of Oregon, COUNTY, their officers, agents, and employees from any and all liability, actions, claims, losses, damages or other costs including attorney's fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by

any person or entity arising from, during or in connection with the performance of the work or Services described in this Agreement, violations of written standards or practice promulgated of Uniform Trial Court Rules 12.500 through 12.640, or Chief Justice Order, as may be amended from time to time, except liability arising out of the sole negligence of the State of Oregon or COUNTY and its employees. Such indemnification shall also cover claims brought against COUNTY under state or federal workers' compensation laws. If any aspect of this indemnity or the above warranty 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 indemnification or the above warranty.

8. INSURANCE: CONTRACTOR and any subcontractors shall procure, maintain and at all times during the term of this Agreement have in effect professional liability insurance in minimum amounts equivalent to tort claim limits set forth in the Oregon Tort Claims Act, ORS 30.260-30.300. CONTRACTOR shall immediately provide COUNTY with certification of required insurance coverage upon request.

If CONTRACTOR employs one or more workers as defined in ORS 656.027 and such workers are subject to the provisions of ORS Chapter 656, CONTRACTOR shall maintain currently valid workers' compensation insurance covering all such workers during the entire period of this Agreement.

9. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS: All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

BILLING: Yamhill County Circuit Court
Attn: Management Assistant
535 Ne 5th Street, Room 201
McMinnville, OR 97128
(503)474-5253

In all instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

10. RIGHTS UPON TERMINATION: If COUNTY terminates CONTRACTOR shall be entitled to receive as full payment for all Services satisfactorily rendered and expenses incurred, and amount which bears the same ratio to the total fees specified in the Agreement as the Services satisfactorily rendered by CONTRACTOR bear to the total Services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damage, if any, sustained by COUNTY due to any breach of the Agreement by CONTRACTOR.
11. OWNERSHIP OF WORK PRODUCT: COUNTY shall be the owner of and shall be entitled to possession of all work products of CONTRACTOR that result from this Agreement ("the Work Products"). In addition, if any of the Work Products contain intellectual property of CONTRACTOR that is or could be protected by federal law, CONTRACTOR hereby grants

COUNTY a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use all such Work Products, including but not limited to databases, templates, file formats, scripts, links, procedures, materials, training manuals and other information, designs, plans or works provided or delivered to COUNTY or produced by CONTRACTOR under this Agreement.

12. NONDISCRIMINATION: CONTRACTOR shall comply with all applicable federal, state and local laws, rules, and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability, sexual orientation, gender identity or source of income.
13. STATUTORY AND REGULATORY COMPLIANCE: CONTRACTOR shall comply with all federal, state and local laws, orders, ordinances and regulations applicable to the work under this Agreement, including, without limitation, the applicable provisions of ORS chapters 279A, B, and C, particularly 279C.500, 279C.510, 279C.515, 279C.520 and 279C.530, as amended. In addition, CONTRACTOR expressly agrees to comply with Title VI of the CIVIL RIGHT ACT of 1964 and comparable state and local laws. CONTRACTOR shall also comply with Section V of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (Pub. Law No. 101-336), ORS 30.670 to ORS 30.685, ORS 659A.142, ORS 659A.145, and all regulations and administrative rules established pursuant to those laws. All Services that are provided pursuant to this Agreement shall conform to the Yamhill County Circuit Court's Rules of Mediation Services in effect at the time services are provided. The requirements of Article XI, Section 10, of the Oregon Constitution are incorporated into this Agreement by reference. Furthermore, CONTRACTOR certifies compliance with the tax laws of the State of Oregon or a political subdivision of the state, including ORS 305.620 and ORS Chapters 316, 317 and 318.
14. 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. The CONTRACTOR further covenants that in the performance of this Agreement it shall not employ any person having any such interest.
15. AUDIT: CONTRACTOR shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the Agreement period. CONTRACTOR agrees to permit Yamhill County, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds. CONTRACTOR shall notify COUNTY of any independent audit report of CONTRACTOR'S activities or finances prepared for CONTRACTOR and agree to submit such reports to COUNTY upon request.
16. GOVERNING LAW; VENUE; ATTORNEY FEES: This Agreement shall be governed and construed by the laws of the State of Oregon. Any claim, action, suit or proceeding between CONTRACTOR and COUNTY that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Oregon for Yamhill County. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THIS FORUM IS AN INCONVENIENT FORUM. In the event an action, suit or proceeding, including

appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be solely responsible for its own attorney's fees, expenses, cost and disbursements for said action, suit, proceeding or appeal.

17. SEVERABILITY: If any term or provision of this Agreement 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.
18. MERGER; COUNTERPARTS: This writing and the attached exhibits constitute the entire and final agreement between the parties. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties. This Agreement may be executed in one or more counterparts (including by means of facsimile or electronic mail via portable document format), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

Dated this 4th day of February, 2021.

CONTRACTOR

Kathleen Hays
[Mediator Name]
Date: 2/9/2021

YAMHILL COUNTY

[Signature]
Commissioner [Name]
Date: 2/25/21

Approved as to form:

[Signature]
County Counsel
Date: 2/26/21

AFFIDAVIT

CONTRACTOR declares that it does not currently employ and will not employ any individuals for work under this Agreement during the term this Agreement is in force.

Kathleen Hays
Principal

2/9/2021
Date

Accepted by Yamhill County
Board of Commissioners on
2/25/21 by Board Order
21-78

Attachment A

(see attached)

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Exhibit "A"

COUNTY: Yamhill Circuit Court

CASE NO. :

CASE NAME:

**DOMESTIC RELATIONS
MEDIATOR REPORT/BILLING SHEET**

☐ Financial Issues Included in Mediation
☐ AMENDED REPORT

Mediator:

TIME SPENT IN MEDIATION:

	MINUTES	EXPLANATION
ORIENTATION		Time the mediator spent orientating the participants to the mediation process – do NOT include group orientation
MEDIATION OR CO-PARENT CLASS		Time spent in mediation activities: mediation sessions, case management, collateral contacts, scheduling, and related tasks
DRAFTING AGREEMENT		Time spent drafting mediation agreement
TOTAL		Total number of minutes spent on this case
TOTAL AMOUNT REQUESTED BY MEDIATOR IN THIS CASE (\$85HR) _____		

OUTCOME OF MEDIATION (select one):

- ☐ **FULL AGREEMENT** (Parties reached agreement on all issues that the parties raised.)
☐ Parenting Plan Attached [Odyssey Code: AGME]
- ☐ **PARTIAL AGREEMENT** (Parties reached agreement on some, but not all, of the issues they raised.) ☐ Parenting Plan Attached [Odyssey Code: MEPA]
- ☐ **FAILURE TO APPEAR FOR MEDIATION** (At least one party failed to appear for mediation.) [Odyssey Code: FTAM]
- ☐ **NO AGREEMENT** (Agreement on none of the issues. Parties appeared for mediation but did not reach any agreement.) [Odyssey Code: MENA]

REASON FOR NO AGREEMENT:

- ☐ Parties unable to reach agreement during mediation
- ☐ The case issues were not appropriate for mediation; one or both parties lacked the capacity to participate in the mediation; mediation was not appropriate due to domestic violence; parties resolved issues prior to mediation or reconciled; none of the other mediation outcomes apply.

NUMBER OF JOINT CHILDREN UNDER THE AGE OF 18: _____

Date: _____

Mediator Signature: _____