

PROFESSIONAL SERVICES AGREEMENT

Matthew "Josh" Herzberg

THIS AGREEMENT ("Agreement") is between **Yamhill County**, a political subdivision of the State of Oregon, acting by and through its Board of Commissioners, its Planning Department and Office of County Surveyor ("County"), and **Matthew "Josh" Herzberg**, an individual, 38430 SW Fort Hill Road, Willamina, OR. 97396 ("Herzberg").

RECITALS:

A. County operating under Oregon Revised Statute ("ORS") 209 (County Surveyors) and is authorized to perform certain public surveying functions being funded under ORS 203.148 (Public Land Corner Preservation Fund). These activities require specialized knowledge and at times can be fairly administered on a part-time or less basis.

B. Herzberg is qualified to perform the duties required by County and imposed by this Agreement. County and Herzberg desire to enter into this Agreement and County is authorized to enter into this Agreement under ORS 203.010(3). NOW, THEREFORE

AGREEMENT:

In consideration of the mutual covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

SECTION 1 SERVICES OF HERZBERG.

1. Herzberg agrees to perform the following services (the "Services"):

- a. Be available for phone/email consultation and support to County staff as needed.
- b. Perform necessary fieldwork, research, and documentation of corner restorations.
- c. Provide the County with a bi-monthly(twice) records reflecting hours worked and serviced provided.
- d. other land surveying duties as assigned.
- e. All activities listed above must be done under the authorization and direction of the County Surveyor.

2. To provide County with adequate notice in any instance when Herzberg will be completely unavailable, temporarily unavailable, or will need to change service schedule.

SECTION 2 OBLIGATIONS OF COUNTY.

The County agrees to perform the following obligations:

1. Provide Herzberg with records necessary for Herzberg's performance under this Agreement, provided that Herzberg shall be subject to the rules and regulations of County relating to the confidentiality of records.

2. Pay Herzberg for the services provided under this Agreement at the rate of \$50.00 per hour for not to exceed amount of 32 hours per month, unless otherwise approved by the County Administrator, Planning Director, and County Surveyor depending on County needs for services and

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funding available. However, no minimum number of hours is guaranteed by this Agreement

3. Make payment to Herzberg as part of the County's normal payroll, following receipt and approval of an itemized statement for Services provided in the preceding payroll period.

4. To withhold state and federal income taxes from the payments owed Herzberg under this Agreement and to pay to Internal Revenue Service and Oregon Department of Revenue all such sums withheld on behalf of Herzberg.

5. To provide, at County's expense, worker's compensation insurance for Herzberg's performance of Services under this Agreement.

6. To pay its proportionate share of social security and Medicare tax for services performed under this Agreement and to withhold and pay to the Internal Revenue Service Herzberg's proportionate share of social security and Medicare taxes dues for services performed under this Agreement. For purposes of these taxes, Herzberg shall be treated as an employee of County.

7. To provide, at County's expense, liability insurance coverage for claims connected to performance of Herzberg's duties under this Agreement, subject to the provisions of the Oregon Tort Claims Act.

SECTION 3 MUTUAL OBLIGATIONS.

County and Herzberg mutually agree as follows:

1. County and Herzberg agree to comply with the rules and regulations of County, applicable federal regulations and all provisions of federal and state law relating to Herzberg's performance of services under this Agreement. The requirements of ORS 279B.200 through 279B.240 and Article XI, Section 10, of the Oregon Constitution are incorporated into this Agreement by reference.

2. That a contract employee/employer relationship is created by this Agreement. The only compensation due Herzberg is specifically stated in this Agreement. Specifically, both parties agree that Herzberg will not be entitled to any benefits typically granted to County employees, including but not limited to, vacation, holiday or sick leave, other leaves with pay, tenure, health and welfare coverage, life and disability insurance, overtime, retirement benefits or to any other benefit not specifically referred to above, except as required by law.

3. Any expenses incurred by Herzberg in the performance of the terms and conditions of this Agreement not specifically provided for in this Agreement shall be the sole and separate responsibility of Herzberg.

4. Herzberg will provide services to County and clients without regard for race, color, creed, religion or national origin in compliance with Title IV, Civil Rights Act, 1954.

5. County may subcontract for similar services with other parties as the need for such services arises.

6. This Agreement shall not be subcontracted or assigned by Herzberg without the prior written consent of County.

7. Herzberg will be subject to the general administrative supervision of the Planning

Director.

SECTION 4 TERM AND TERMINATION.

1. Term. Unless terminated in accordance with subsection (2), the term of this Agreement is from September 7, 2022, through June 30, 2023, and supersedes any prior agreements between the parties.

2. Termination. Either party may terminate this Agreement on 15 days' written notice to the other party. Termination shall not excuse liabilities incurred prior to the termination date.

SECTION 5 PERS; WAIVER OF COUNTY LIABILITY. As a future PERS retiree, Herzberg acknowledges and agrees that it is Herzberg's sole responsibility to comply with all terms and conditions applicable to Herzberg's receipt of PERS pension benefits, including but not limited to any limitation on the number of hours Herzberg may work for County (or other qualifying employers) in a calendar year without risking loss or reduction of PERS pension benefits. **County bears no responsibility to monitor or ensure Herzberg's compliance with such PERS requirements and Herzberg hereby voluntarily waives any and all liability of County for Herzberg's failure to adhere to applicable PERS requirements during or after the term of this Agreement.** If Herzberg has questions regarding compliance with PERS requirements, Herzberg shall direct all such questions to PERS.

SECTION 6 COST AND ATTORNEYS FEES. In the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement each party shall be wholly responsible for its own expenses which it may reasonably incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

SECTION 7 CONFIDENTIALITY. Herzberg acknowledges that Herzberg may, in the course of performance under this Agreement, be exposed to or acquire information that is the confidential information of County. Any and all information provided by County and marked confidential, or information identified as confidential in a separate writing, that becomes available to Herzberg in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items, including software, that result from Herzberg's use of the Confidential Information are also deemed Confidential Information. Herzberg agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Herzberg uses in maintaining the confidentiality of Herzberg's own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information for any purposes whatsoever, except as may be provided elsewhere under this Agreement. Herzberg agrees that, upon termination of this Agreement or at County's request, Herzberg will turn over to County all documents, papers, and other matter in Herzberg's possession that embody Confidential Information.

SECTION 8 WAIVER; SEVERABILITY. The failure of County to enforce any provision of this Agreement shall not constitute a waiver by County of that or any other provision. The parties agree that 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 conditions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 9 ENTIRE AGREEMENT. This Agreement is the entire agreement between the parties,

and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written Agreement shall be valid or binding. No alterations, changes, or additions to this Agreement shall be made except in a written document signed by both parties.

SECTION 10 GOVERNING LAW; JURISDICTION; VENUE. This Agreement 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 AClaim@) between County and Provider that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. HERZBERG, BY EXECUTION OF THIS AGREEMENT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth adjacent to their signatures below.

**YAMHILL COUNTY
BOARD OF COMMISSIONERS**


MATTHEW "JOSH" HERZBERG


LINDSAY BERSCHAUER, Chair

Date: 9/7/22

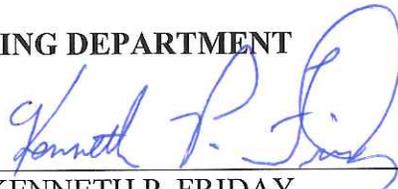
Date: 9/15/22

SS #: on file

APPROVED AS TO FORM:

PLANNING DEPARTMENT

By: 
CHRISTIAN BOENISCH
County Counsel

By:  9/8/2022
KENNETH P. FRIDAY
Planning Director

By: 
JASON E. FOOSE
County Surveyor

Accepted by Yamhill County
Board of Commissioners on
9/15/22 by Board Order
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