

## PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between YAMHILL COUNTY, a political subdivision of the State of Oregon, acting by and through its Parks Department, hereinafter referred to as the "County", and Design Workshop, Inc., an Oregon corporation whose Federal Employer Identification No. is 84-0819969, hereinafter referred to as the "Consultant".

### RECITALS

WHEREAS, The County requires the services of an consulting firm with the particular training, abilities, knowledge, qualifications, and experience for the Yamhill County Parks Master Plan Proposal (hereinafter referred to as the "Project"); and

WHEREAS, The Consultant possesses such training, abilities, knowledge, qualifications, and experience and is willing to perform the certain services for the County as set forth herein; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by the parties as follows:

### AGREEMENT

1. **TERM.** This Contract shall become effective, and services required hereunder shall commence, on the date the Contract is executed by both parties, or on June, 1, 2024, whichever is sooner, and shall terminate on July, 1, 2025, unless otherwise terminated or extended as provided herein. Upon mutual agreement of the parties, the Contract term may be renewed and extended in accordance with Section 7.]
2. **CONSIDERATION.**
  - a. **Not-to-Exceed.** As consideration for the performance of all terms and conditions set forth in this Contract, the County shall pay the Consultant a sum not to exceed \$155,190. Payment for all services performed hereunder, including reimbursable expenses as provided below, shall not exceed this amount.

**Invoicing.** On or before the 15th of each month, the Consultant shall submit an invoice for work performed by the Consultant during the preceding month. The invoice shall set out all items for payment including, but not limited to: the name of the individual, direct labor hourly rate, hours worked during the period, and tasks performed. The Consultant shall also attach photocopies of claimed reimbursable expenses, if any. Where applicable, the Consultant shall stamp and approve all subcontractor invoices. The County shall pay the Consultant within 30 days following the date the invoice is received. The County shall make payments only after the County's receipt and approval of (i) the Consultant's detailed monthly invoice, and (ii) all documentation required by the invoice. All Invoices shall be sent to:

Yamhill County Public Works  
ATTN: Mark Lago  
2060 NE Lafayette Avenue  
McMinnville, OR 97128  
lagom@yamhillcounty.org
  - b. **Exclusive Payment.** The compensation provided herein shall be exclusive, and the County shall neither pay nor provide Consultant with any fringe benefits, including, but not limited to, retirement, health insurance, workers' compensation insurance, unemployment insurance, or sick leave. No additional compensation or alternate form thereof shall be payable by the County to the Consultant for any purpose whatsoever unless otherwise agreed in writing. The Consultant shall be responsible for paying all income taxes, Social Security or self-employment taxes and any other taxes or assessments imposed by any governmental body incurred by reason of the County's payment of compensation hereunder to the Consultant.
3. **PROFESSIONAL SERVICES.** The Consultant shall perform the following professional services to the satisfaction of the County:
  - a. The Consultant shall abide by and conform to all obligations asserted by the Consultant in their proposal, attached hereto as Exhibit A (Project scope) and incorporated herein.

4. STANDARD OF CARE.

- a. The Consultant shall perform all services required hereunder in accordance with the same professional skill, care, diligence, and standards as other professionals performing similar services under similar conditions (the "Standard of Care".)
- b. The Consultant shall prepare, in accordance with the Standard of Care, all drawings, specifications, deliverables, and other documents so that they accurately reflect, fully comply with and incorporate all applicable laws, rules, and regulations, and so that they are complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of the Consultant.
- c. The Consultant shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, specifications, deliverables, and other documents prepared by the Consultant at no additional cost to the County.
- d. The County's review or acceptance of documents shall not be deemed as approval of the adequacy of the drawings, specifications, deliverables, and other documents. Any review or acceptance by the County will not relieve Consultant of any responsibility for complying with the Standard of Care.
- e. During the term of the Contract, the Consultant shall obtain, hold, maintain, and fully pay for all licenses and permits required by law for the Consultant to conduct its business and perform the services required hereunder. The Consultant shall review the Project site and the nature of the services to be provided and advise Owner throughout the course of the Project as to the necessity of obtaining all Project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.
- f. The Consultant shall make available key personnel of the Consultant, as identified by Consultant in their proposal. Without prior notice to, and the written consent of, Owner, the Consultant shall not re-assign or transfer any key personnel to other duties or positions so that the key personnel are unable to fully perform his or her responsibilities under the Contract. The Consultant shall remove any individual or sub-consultant from the Project if so directed by the County in writing following discussion with the Consultant, provided that the Consultant shall have a reasonable time period within which to find a suitable replacement.
- g. The Consultant shall, at no additional cost to the County, render assistance to the County in resolving problems or other issues relating to the Project design or to specified materials.

5. OWNERSHIP OF WORK PRODUCT. All work product produced by the Consultant under this Contract is the exclusive property of the County. "Work Product" includes, but is not limited to: research, reports, computer programs, manuals, drawings, recordings, photographs, artwork, and any data or information in any form. The Consultant and the County intend that such Work Product shall be deemed "work made for hire" of which the County shall be deemed the author. If for any reason a Work Product is deemed not to be a "work made for hire," the Consultant hereby irrevocably assigns and transfers to the County 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. The Consultant shall obtain such interests and execute all documents necessary to fully vest such rights in the County. The Consultant 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. Notwithstanding the foregoing, all pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of the Consultant are and will remain the exclusive property of the Consultant.

6. INDEPENDENT CONSULTANT. This agreement is not a contract of employment. The County does not seek to hire Consultant as an employee(s) of the County nor does the Consultant desire to be an employee(s) of the County for performance of the services described herein. The parties intend that the Consultant, in performing the services specified herein, shall be and act as an independent Consultant and shall have professional control of the work and the manner in which it is performed. The Consultant shall have the sole authority to determine the manner and means of performing the services described herein, and the County shall not interfere with, control, or direct the manner or method in which such services are performed; provided, the County shall direct Consultant as to the work to be assigned and shall have the right to direct the required results to the extent such direction may be consistent with the nature of the Consultant's services. The Consultant shall not be considered an agent of the County, and the County shall not be responsible for any claims, demands, or causes of action of any kind or character arising in favor of any person, on account of personal injuries, or death, or damage to property occurring, growing out of, incident to, or resulting directly or indirectly from the operations or activities of the Consultant.

7. AMENDMENT. This Contract may be amended to the extent permitted by applicable statutes, administrative rules, ordinances, and local ordinances. No amendment shall bind either party unless in writing and signed by both parties.

8. COMPLIANCE WITH ORS 279B.220. For all services provided under this Contract, the Consultant shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the Consultant or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the County or any subdivision thereof; and (iv) pay to the State of Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If the Consultant does not pay promptly any claim that is due for the services furnished to the

Consultant by any subcontractor in connection with this Contract, the County may pay such claim and charge that payment against any payment due to the Consultant under this Contract. The County's payment of a claim does not relieve the Consultant or its surety, if any, from their obligations for any unpaid claims.

9. HOURS OF LABOR; COMPLIANCE WITH PAY EQUITY PROVISIONS.

- a. Pursuant to ORS 279B.235(3), the Consultant shall pay the Consultant's employees who perform work under this Contract at least time and a half for all overtime in excess of 40 hours a week, and for work performed on any legal holiday as specified in ORS 279B.020, except for employees who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
- b. Pursuant to ORS 279B.235(1)(b), the Consultant shall comply with the prohibition set forth in ORS 652.220. Such compliance is a material element of this Contract and failure to comply is a breach that entitles the County to terminate the Contract for cause.
- c. Pursuant to ORS 279B.235(1)(c), the Consultant shall not prohibit any of the Consultant's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
- d. Pursuant to ORS 279B.235(5)(b), the Consultant shall notify, in writing, any person employed by the Consultant under this Contract, either at the time of hire or before work begins on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the Consultant may require the employees to work.

10. WORKERS' COMPENSATION. If the Consultant is a subject employer for workers' compensation or unemployment insurance purposes, Consultant shall provide such workers' compensation and unemployment coverage benefits at its sole cost and expense and shall provide proof of such insurance and benefits at the County's request. The parties hereto specifically agree that this Contract will render the Consultant and the Consultant's employees, if any, ineligible for benefits under ORS 656.029 and that the County shall not be liable for, responsible for, or in any way or manner be required to provide, workers' compensation benefits for the Consultant or the Consultant's employees.

11. COMPLIANCE WITH LAWS. The Consultant shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the provision of services under this Contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101- 336), ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Any violation by Consultant of any applicable law required in the provision of services hereunder shall constitute breach of this Contract, and Consultant shall be solely liable for any and all claims arising out of, connected with, or as a result of the violation.

12. INDEMNIFICATION. The Consultant shall defend, indemnify, and hold harmless the County, its officers, agents, and employees from any claims, liabilities, demands, damages, actions, or proceedings arising from or relating to the acts or omissions of the Consultant in connection with the performance of any services required hereunder. The Consultant shall be responsible for any damage to property, injury to persons, and any loss, expense, inconvenience, and/or delay that may be caused by, or result from, the carrying out of services under this Contract.

13. INSURANCE. The Consultant shall, at its expense, obtain the following insurance coverage and keep them in effect during the entire term of this Contract:

- a. Comprehensive General Liability Insurance (including contractual liability and completed operations coverage) with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$3,000,000, covering all activities and operations of the Consultant;
- b. Professional Liability Insurance, including Errors and Omissions coverage, with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$3,000,000, to protect against all loss suffered by the County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to the work or services provided under this Contract.
- c. Additional Insurance Requirements:
  - i. All insurance policies shall be written on an occurrence basis and be in effect for the term of this Contract. Written authorization from the County is required for any insurance policy written on a claims-made basis. Any insurance policy authorized to be written on a claims-made basis shall be in effect for the term of this Contract plus for three (3) years after the termination of this Contract.
  - ii. Insurance coverage shall apply on a primary and non-contributory basis.
  - iii. Prior to commencing services, the Consultant shall furnish current Certificate(s) of Insurance for all required insurance to the County. The insurance must be provided by an insurance company or entity that is authorized to transact the business of insurance and issue coverage in the State of Oregon, with an AM best rating of at least A-. The Certificate shall provide, by policy endorsement, if necessary, that

the County, its officers, employees, agents, and volunteers are additional insureds with respect to the Consultant's services provided under this Contract and that there shall be no cancellation, termination, non-renewal, material change to, potential exhaustion of aggregate limits, or reduction of limits of the required insurance without at least 30 days written notice from the Consultant or its insurer to the County. If requested, the Consultant shall provide complete copies of insurance policies to the County.

14. **TERMINATION.**

- a. County's Termination for Convenience. The County may terminate this Contract in whole or in part whenever the County determines that termination of the Contract is in the best interest of the County. The County will provide the Consultant with written notice of a termination for convenience at least thirty (30) calendar days before the intended termination date. By the termination date, the Consultant shall provide the County with immediate and peaceful possession of the Project site. Such termination shall be without liability or penalty, and in no circumstance shall Consultant be entitled to lost profits for work not performed due to termination. No termination for convenience shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.
- b. County's Termination for Cause. The County may immediately terminate this Contract without liability or penalty for either of the following causes by the mailing of written notice to the Consultant at the Consultant's address provided herein, specifying the cause:
  - i. The Consultant breaches any of the provisions of this Contract;
  - ii. The Consultant no longer holds all licenses or certificates that are required to perform the services required under this Contract;
  - iii. The County lacks lawful funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow the County, in the exercise of its reasonable discretion, to pay for the Consultant's services; or
  - iv. Federal, state, or local laws, regulations, or guidelines are modified or interpreted in such a way that either the services under this Contract are prohibited, or the County is prohibited from paying for such services from the planned funding source.
- c. Consultant's Termination for Cause. The Consultant may terminate this Contract for cause if the County fails to pay the Consultant pursuant to this Contract. The Consultant may also terminate this Contract for cause if the County commits any material breach or default of any covenant, warranty, obligation, or agreement under this Contract and such breach or failure is not cured within thirty (30) calendar days after delivery of the Consultant's notice, or such longer period as the Consultant may specify in such notice.

15. **FORCE MAJEURE.** Neither the County nor the Consultant shall be held responsible for delay or default caused by fire, riot, civil disobedience, acts of God, or war where such cause was beyond the reasonable control of the County or the Consultant. The Consultant shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. The risk of loss or damage to the subject matter of this agreement shall be upon the Consultant until such time as the County has accepted the services required hereunder.

16. **ASSIGNMENT; DELEGATION; SUCCESSOR.** The Consultant shall not assign, delegate, nor transfer any of its rights or obligations under this Contract without the County's prior written consent. The County's written consent does not relieve the Consultant of any obligations under this Contract, and any assignee, transferee, or delegate is considered the Consultant's agent. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their respective successors and assigns.

17. **GOVERNING LAW, JURISDICTION, VENUE, & ATTORNEY FEES.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the County (and/or any other agency or department of Yamhill County) and the Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. Provided, however, if the 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. The Consultant hereby consents to the *in personam* jurisdiction of said courts. Each party shall be responsible for the party's attorney fees, costs and disbursements at all times including appeals.

18. **RECORDS.** The Consultant shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, the Consultant shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Consultant's performance hereunder. The Consultant acknowledges and agrees that the County, the Oregon Secretary of State's Office, the Federal Government and their duly authorized representatives shall have access to such fiscal records and all other documents that are pertinent to this Contract for the purpose of performing audits and examinations and making transcripts and excerpts. All such fiscal records and pertinent documents shall be retained by the Consultant for a minimum of six (6) years (except as required longer by law) following final payment

and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

19. NOTICES. 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:

County: Yamhill County Parks Department  
ATTN: Travis Pease  
535 NE 5<sup>th</sup> Street  
McMinnville, Oregon 97128  
peaset@yamhillcounty.gov

Consultant: Design Workshop, Inc.  
ATTN: Anne Laybourn  
22860 Two Rivers Road, Unit 102  
Basalt, Colorado 81621  
alaybourn@designworkshop.com

20. FOREIGN CONSULTANT. If the Consultant is not domiciled in or registered to do business in the State of Oregon, the Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The County shall withhold final payment under this Contract until the Consultant has met this requirement.
21. TAX CERTIFICATION. The Consultant hereby certifies that it is not in violation of any Oregon Tax Laws and that it shall continue to comply with Oregon Tax Laws during the term of this Contract. Pursuant to ORS 279B.045, the Consultant's failure to comply with the Oregon Tax Laws is considered a default for which the County may terminate the Contract and seek damages and other relief as available. For purposes of this certification, "Oregon Tax Laws" means those programs listed in ORS 305.380(4).
22. WAIVER. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract, or the waiver by that party of the ability to enforce that or any other provision in the event of any subsequent breach.
23. ENTIRE AGREEMENT. This Contract constitutes the entire agreement between the parties on the subject matter hereof. No waiver, consent, modification or change of terms or provisions of this agreement 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 the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.
24. COUNTERPARTS. This Contract and any subsequent amendments may be executed in any number of counterparts (including by facsimile, PDF, or other electronic transmission), each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one agreement binding on all parties.
25. SEVERABILITY. If any provision of this Contract shall be held invalid or unenforceable by any court or tribunal of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision, and the obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
26. SURVIVAL. All rights and obligations shall cease upon termination of this Contract, except for those rights and obligations that by their nature or express terms survive termination of this agreement. Termination shall not prejudice any rights or obligations accrued to the parties prior to termination.

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

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IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, this Contract on the date indicated by their duly authorized officials.

**CONSULTANT**



Signature

Anna Laybourn

Name (printed)

Principal in Charge

Title

5/16/2024

Date

**YAMHILL COUNTY**

DocuSigned by:



Signature

Lindsay Berschauer

Name (printed)

Chair, Board of Commissioners

Title

5/30/2024

Date

**APPROVED AS TO FORM**

DocuSigned by:



By:

Jodi Gollehon, Assistant County Counsel II

**APPROVED AS TO CONTENT:**

By:



Mark A. Lago, Public Works Director

**Approved by the BOC on: 5/30/24**

**via Board Order No.: 24-141**