

PROFESSIONAL SERVICES AGREEMENT

This Agreement is by and between Malheur County, Oregon, a political subdivision of the State of Oregon, 251 B. Street West #5, Vale, Oregon 97918 referred to as “County”, and

hereinafter referred to as “Consultant”, who agree to the following terms and conditions. Collectively, County and Consultant are the “parties”.

- 1. Scope of Work.** County desires to engage Consultant to provide engineering services for the following Project and Scope of Work:

Specific buildings/structures in Malheur County, Oregon will be assigned and mutually agreed upon by Consultant and County in work-orders.

Consultant will:

- 1. Conduct on-site visual structural assessments, including visual mechanical and electrical systems, if applicable, to identify the extent of the damage to assigned structures.*
- 2. Submit a written report to owners and County which contains:
 - a. delineation of the damage;*
 - b. recommendations on whether the damage should be repaired or replaced; and*
 - c. recommendations for any limitations that should be placed on the use of the building, due to safety or other concerns**
- 3. Submit to County invoice, report and building owner’s receipt and acknowledgement of Consultant’s written report no later than June 22, 2017.*

- 2. Exclusions from Scope of Work.** Work specifically excluded from the above Scope of Work includes: testing, surveying, and meal per diem.

- 3. Time for completion.** This Agreement shall be effective upon signature of County. Scope of Work will be complete no later than June 22, 2017. Time is of the essence in the performance of this Agreement.

- 4. Service.** Consultant warrants that its services are performed under the general direction of a Registered Professional Engineer (civil, general or structural) licensed in the State of Oregon, and with the usual thoroughness and competence of the engineering profession. No other warranty or representation, expressed or implied, is included or intended in Consultant’s proposal, contract or report, wither written or oral.

5. **Payment.** For the performance of its services, Consultant shall be paid by County \$ _____, on a time and material basis. The billing rates and reimbursable fees attached will remain valid through completion of the Project or June 22, 2017, whichever is shorter. County shall only reimburse for expenses reasonably and necessarily incurred in the performance of this Agreement. Expenses reimbursed shall be at the actual cost incurred, and shall not include any mark-up.
6. **Manner of Payment.** Invoices will be issued for work completed and are due and payable when County is provided final and complete damage/assessment reports acceptable to County and a written acknowledgement from building owners indicating receipt of report from Consultant. Invoices must be submitted no later than June 22, 2017. Invoices are considered delinquent thirty (30) days after receipt.
7. **Termination.** Either Consultant or County may terminate this Agreement for work not yet performed at any time for any reason.
8. **Insurance.**

Consultant shall obtain and at all times keep in effect professional liability and comprehensive liability insurance and property damage insurance covering the contracted activities. Certificates of Insurance shall be provided to the County by the Consultant prior to execution of this Agreement. Said insurance shall, at a minimum, provide for:

Type of Insurance	Limits of Liability (not less than)
Professional Liability AND General Liability	Bodily Injury and property damage: Combined single limit or the equivalent of not less than \$ 1,000,000 per occurrence
Automobile Liability covering any vehicle used	same as above
Worker's Compensation	if contractor employs one or more workers as defined in ORS 656.027 and such workers are subject to ORS 656.001 to 656.794, contractor shall maintain currently valid workers' compensation insurance covering all such workers; \$500,000 statutory.

Consultant shall include Malheur County as a named insured on insurance policies issued for this Agreement.

Certificates of Insurance shall be provided to the County by the Consultant. Such insurance shall be issued by an insurance company licensed to do business in the State of Oregon and shall contain a 30 day notice of cancellation endorsement.

- 9. Indemnification.** Consultant agrees to defend, indemnify and save County, its agents and employees harmless from any and all losses, claims, action, costs, fees, expenses, judgments, subrogation or other damages resulting from injury to any person (including injury resulting in death) or damage (including loss or destruction) to property, arising or resulting from the fault, negligence, wrongful act or wrongful omission of Consultant or its agents or employees
- 10. Status of Consultant.** Consultant is an independent contractor as defined in ORS 670.600. Consultant will be solely responsible for payment of any Federal or State taxes required as a result of this Agreement.
- 11. Ownership of Records.** The County shall retain ownership of all documents, reports and calculations. All work and data of Consultant that results from this Contract (the “Work Product”) is the exclusive property of County. County and Consultant intend that such Work Product be deemed “work made for hire” of which County shall be deemed author. In the event that Work Product is deemed Consultant’s Intellectual Property and not “work made for hire”, Consultant hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant’s Intellectual Property, and to authorize others to do the same on County’s behalf. Consultant shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. If this Agreement is terminated prior to completion, County, in addition to any other rights provided by this Agreement, will require Consultant to transfer and deliver all partially completed work products, reports or documentation that Consultant has specifically developed or specifically acquired for the performance on this Agreement.
- 12. Assignment.** Consultant shall not assign, subcontract or transfer any interest in or under this Agreement without the prior written consent of County.
- 13. No Third Party Beneficiaries.** County and Consultant are the only parties to this Agreement and are the only parties to enforce its terms. Nothing in this Agreement gives or provides any benefit or right, whether directly or indirectly or otherwise, to third persons.

14. **Successors in Interest.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
15. **Right to Audit and Retention of Records:** County retains the right to audit books and records of the Consultant to the extent that such books and records relate to this Agreement. Consultant shall retain such books and records for a period of three (3) years from the date of final payment under this Agreement.
16. **Waiver:** No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
17. **Amendment:** This Agreement and any amendments to this Agreement shall be in writing and will not be effective until approved by the Malheur County Court and the Consultant.
18. **Severability:** 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 provisions 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.
19. **Jurisdiction/Governing Law.** This Agreement shall be subject to the laws of Oregon and venue for any disputes arising out the contractual relationship shall be in the Malheur County Circuit Court for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought in the U.S. District Court for the State of Oregon in Pendleton.
20. **Notices:** Any notice required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or USPS by certified or registered mail, addressed to the County or the Consultant at the address set forth below, or to either of them in any other manner prescribed by law. Delivery of notice shall be assumed three (3) calendar days after the date notice is mailed.

COUNTY:

CONSULTANT:

Malheur County Court
Attn: Malheur County Court Judge
251 B. Street West #5
Vale, OR 97918
(541) 473-5124

21. Merger. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealings between the parties on the subject matter hereof.

22. Signatures.

MALHEUR COUNTY COURT:

CONSULTANT:

Malheur County Court Judge
Dan P. Joyce
Date: _____

Signature

Don Hodge
County Commissioner

Title

Larry Wilson
County Commissioner

License No. _____