

PROFESSIONAL SERVICES CONTRACT

CONTRACTOR: Kiser & Kiser, LLC

DATE: April 1, 2023.

ADDRESS: 10639 SE Juniper Canyon Road, Prineville, Oregon 97754

PHONE NUMBER: 541.419.1101 EMAIL: cliffkiser@gmail.com

This Professional Services Contract (Agreement) by and between [name] ("Contractor") and Crook County Vector Control District, an Oregon public corporation ("District"), entered into this date written above, authorizes Contractor to carry out and complete the services as described below in consideration of the mutual covenants set forth herein.

1. PROJECT: The services as described on Exhibit E to this Agreement are to be provided by Contractor in connection with a Project identified as follows: Crook County Vector Control District Manager.
2. DURATION: This Agreement shall run from April 1, 20223 through March 31, 2028, unless terminated or extended according to the provisions of this Agreement. The Parties may renew this Agreement for additional one-year terms.
3. SCOPE OF SERVICES: Contractor will perform the services described on Exhibit E attached hereto.
4. FEE FOR SERVICE: Contactor will be paid \$96,000.00 for the first year's term. Contractor will be paid \$16,000.00 per month for the first five (5) months and the final \$16,000.00 will be paid on March 1, 2024 after completing the pesticide use plan, budget, and other compliance paperwork for the year.
5. EXTRA SERVICES: Contractor may also perform Extra Services (Services not specified in the Scope of Service), provided Contractor and District have agreed in advance and in writing to the scope and fees for such Extra Services.
6. EXHIBITS: The following documents which are attached to this Agreement are incorporated herein and by this reference made part hereof
Exhibit A: Required Terms for All Public Contracts
Exhibit B: Independent Contractor Status
Exhibit C: Protected Information
Exhibit D: Business Associate Agreement
Exhibit E: Scope of Services
7. TAX DUTIES AND LIABILITIES: Contractor shall be responsible for all taxes applicable to any payments received pursuant to this Agreement and is currently and will

remain fully compliant with tax laws, as certified in Exhibit A. District shall not withhold, pay, or in any other manner be responsible for payment of any taxes on behalf of Contractor.

8. SUBMITTAL OF W-9 BEFORE PAYMENT: Contractor must provide District with a fully completed W-9 form upon execution of the Agreement and prior to beginning services. Contractor will not be paid until a fully completed W-9 form is submitted.

9. REIMBURSEMENT OF EXPENSES: Contractor shall not be entitled to reimbursement by District for any expenses incurred by Contractor unless otherwise agreed in writing.

10. PAYMENT BY DISTRICT: Unless otherwise agreed to within this Agreement, District will pay invoices as negotiated between the Parties.

11. INDEMNIFICATION AND HOLD HARMLESS: The Contractor shall assume all responsibilities for the work, and bear all losses and damages directly or indirectly resulting to the Contractor, the District, or to others on account of the character or performance of the work, unforeseen difficulties, accidents, or any other cause whatsoever. The Contractor shall assume defense of, indemnify and save harmless the District, its officials, agents, and employees from all claims, liability', loss, damage and injury of every kind, nature and description, directly or indirectly resulting from activities in the performance of the Agreement, the ownership, maintenance or use of motor vehicles in connection therewith, or the acts, omissions, operations, or conduct of the Contractor or any subcontractor under the Agreement or any way arising out of the Agreement, irrespective of whether any act, omission or conduct of the District connected with the Agreement is a condition or contributory cause of the claim, liability loss, damage or injury and irrespective of whether act, omission, or conduct of the Contractor or subcontractor is merely a condition rather than a cause of a claim, liability, loss damage or injury. The Contractor shall not be liable for nor be required to defend or indemnify, the District relative to claims for damage or damages resulting solely from acts or omissions of the District, its officials, agents or employees. The absence of or inadequacy of the liability insurance required in section 15 below shall not negate Contractor's obligations in this paragraph.

12. CONTRACTOR STATUS: Contractor certifies it is a "Contractor" under ORS 670.600 and relevant law as it pertains to this contract and as further described in incorporated Exhibit B.

13. CONFORMANCE WITH OREGON PUBLIC CONTRACT LAWS: Contractor shall fully comply with Oregon law for public contracts, as more fully set forth in the Exhibits.

14. TERMINATION:

14.1. Either party may terminate this Agreement after giving ninety (90) days' prior written notice to the other of intent to terminate without cause. The parties shall deal with each other in good faith during the ninety (90) day period after notice of intent to terminate without cause has been given;

14.2. With reasonable cause, either party may terminate this Agreement effective immediately after giving written notice of termination for cause. Reasonable cause shall include material violation of this Agreement or any act exposing the other party to liability to others for personal injury or property damage;

14.3. Notwithstanding any other provision of this Agreement, District shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of District's future fiscal years unless and until the Crook County Vector Control District appropriates funds for this Agreement in District's budget for such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated.

15. INSURANCE

15.1. GENERAL INSURANCE: Contractor shall maintain in force for the duration of this agreement a Commercial General Liability insurance policy written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury or property damage. The policy will contain a "per project" Aggregate endorsement. Automobile liability (owned, non-owned and hired) insurance with limits not less than \$2,000,000 per occurrence shall be maintained. The District, its employees, officials and agents will be named as an Additional Insured where operations are being conducted related to this Agreement, on the General Liability policy as respects to work or services performed under this Agreement to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Contractor or the fault of Contractor's agents, representatives or subcontractors. This insurance will be primary over any insurance the District may carry on its own. Contractor understands that District is a public entity subject to the requirements of the Oregon Governmental Tort Claims Act, ORS 30.260 et seq. In the event that District's financial obligations or liabilities are modified by any amendment to the liability limits imposed by the Oregon Governmental Tort Claims Act, Contractor agrees that the limits regarding liability insurance set forth in this section 15.1 will be modified to conform to such limits. Contractor and District shall sign an amendment to this Agreement incorporating such modification. Pollution insurance will continue to be carried by the District with Kiser & Kiser, LLC, to be named as additional insured.

15.2. WORKERS' COMPENSATION: Contractor shall provide and maintain workers' compensation coverage with limits not less than \$500,000 for its employees, officers, agents, or partners, as required by applicable workers' compensation laws as defined in ORS 656.027 and ORS 701.035(5). If Contractor is exempt from coverage, a written statement signed by Contractor so stating the reason for exemption shall be provided to the District.

15.3. EVIDENCE OF INSURANCE COVERAGE: Evidence of the required insurance coverages issued by an insurance company satisfactory to the District shall be provided to the District by way of a District approved certificate of insurance before any work or services commence.

15.3.1. NOTICE OF CANCELLATION OR MATERIAL CHANGE IN COVERAGE: The certificate of insurance shall contain a requirement that the insurance company notify the District 30 days prior to any cancellation or material change in coverage. If the approved insurance company will not provide this 30-day notice, Contractor shall provide written notice to District within 2 calendar days after Contractor becomes aware that its coverage has been canceled or has been materially changed. Regardless of what circumstances caused Contractor's insurance coverage to cease or be modified, it is Contractor's responsibility to notify District. Failure to maintain proper insurance or provide notice of cancellation or modification shall be grounds for immediate termination of this contract.

15.4. EQUIPMENT AND MATERIAL: Contractor shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the work. District shall provide equipment and material for Contractor and Contractor shall be responsible for any loss, damage, or destruction caused by its own negligence; otherwise, District shall be responsible for maintenance thereon. District will also provide all chemical and Contractor has authorization to purchase the chemical being used by the District.

15.5. SUBCONTRACTOR: The Contractor shall require all subcontractors to provide and maintain general liability, auto liability, professional liability (as applicable), and workers' compensation insurance with coverage's equivalent to those required of the general contractor in this Agreement. Contractor shall require certificates of insurance from all subcontractors as evidence of coverage.

15.6. EXCEPTION OR WAIVERS: Any exception or waiver of these requirements shall be subject to review and approval from the District.

16. GENERAL PROVISIONS:

16.1 ENTIRE AGREEMENT: This agreement signed by both parties is the final and entire agreement and supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives.

16.2 AMENDMENTS: The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever, without prior written approval of District. No modification of this Agreement shall bind either party unless reduced to writing and subscribed by both parties, or ordered by a Court

16.3. ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this agreement, in whole or in part, without the prior written approval of District. No such written approval shall relieve Contractor of any obligations of this Agreement, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable as between the original parties to this Agreement as if no such assignment had occurred.

16.4. SUB-AGREEMENTS: If this project is funded in whole or in part with grant funds received by District, Contractor, as a sub-recipient of those funds, shall fully comply with all applicable terms, conditions, and requirements of the Grant Agreement, including but not limited to procurement regulations, property and equipment management and records, indemnity, and insurance provisions.

16.5. SUCCESSORS IN INTEREST: The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.

16.6. AUTHORIZED SIGNATURES REQUIRED: Only those persons authorized by the District Board may enter into a binding agreement or contract, including a purchase order, for the purchase or sale of goods or services on the part of the District.

16.7. NO ENCUMBRANCES: Any property delivered or granted to District under this Agreement, and Contractor's Services rendered in the performance of Contractor's obligations under this Agreement, shall be provided to District free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

16.8. NO AUTHORITY TO BIND DISTRICT: Contractor has no authority to enter into contracts on behalf of District. This Agreement does not create a partnership between the parties.

16.9. HOW NOTICES SHALL BE GIVEN: Any notice given in connection with this Agreement must be in writing and be delivered either by hand to the party or by certified

mail, return receipt requested, to the party at the party's address as stated on the work authorization or to Crook County Vector Control District at 545 NE 7th Street, Prineville, Oregon 97754, attention "Legal Department."

16.10. GOVERNING LAW AND VENUE: Any dispute under this Agreement shall be governed by Oregon law, with venue being located in Crook County, Oregon.

16.11. SEVERABILITY: If any provision of this Agreement is declared by a court 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 provision held to be invalid.

16.12. ACCESS TO RECORDS: District and its duly authorized representatives shall have access to books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.

16.13. CONFIDENTIALITY: During the course of performance of work under this Agreement, Contractor may receive information regarding organizations and District's business practices, employees, clients etc. Contractor agrees to maintain the confidentiality of such information and to safeguard such information against loss, theft or other inadvertent disclosure.

16.14. FEDERAL EMPLOYMENT STATUS: In the event payment made pursuant to this Agreement is to be charged against federal funds, Contractor hereby certifies that it is not currently employed by the Federal Government and the amount charged does not exceed Contractor's normal charge for the type of services provided.

16.15. COMPLIANCE WITH ALL GOVERNMENT REGULATIONS: Contractor shall comply with all Federal, State and local laws, codes, regulations and ordinances applicable to the work performed under this Agreement. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Agreement. Damages or costs resulting from noncompliance shall be the sole responsibility of Contractor.

16.16. FORCE MAJEURE: Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. District may terminate this Agreement upon written notice after determining such delay or default will unreasonably prevent successful performance of the Agreement.

16.17. RIGHTS IN DATA: All original written material, including programs, card decks, tapes, listings, and other documentation originated and prepared for District pursuant to this Agreement, shall become exclusively the property of District. The ideas, concepts,

know-how, or techniques developed during the course of this Agreement by Contractor personnel can be used by either party in any way it may deem appropriate material already in Contractor's possession, independently developed by Contractor, outside the scope of this Agreement, or rightfully obtained by Contractor from third parties, shall belong to Contractor. This Agreement shall not preclude Contractor from developing materials which are competitive, irrespective of their similarity to materials which might be delivered the District pursuant to this Agreement. Contractor shall not, however, use any written materials development under this Agreement in developing materials for others, except as provided in this section.

16.18. ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT: In the event of any claim or suit against District on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any material furnished or work or services performed hereunder, Contractor shall defend District against any such suit or claim and hold District harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit or claim and hold District harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit.

16.19. ATTORNEY FEES: In the event an action, lawsuit, or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall bear its own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding, or appeal.

16.20. WAIVER: The failure of either party at any time or from time to time to enforce any of the terms of this Agreement shall not be construed to be a waiver of such term or of such party's right to thereafter enforce each and every provision of the Agreement.

16.21. TAX CREDITS: Should Contractor become entitled to tax credits or tax deductions directly attributable to the costs of energy-efficiency attributes included in the project, such as those provided for in IRS Notice 2008-40, Contractor and District agree to share equally in any net tax benefit received by Contractor. For the purposes of this provision: (a) "net tax benefit" means the reasonable estimate of the net reduction in Contractor's tax liability for the current period, including any tax benefit, reduced by Contractor's reasonable costs for applying for and calculating the benefit, and (b) "reduction in Contractor's tax liability" means a reduction in the amounts due or to become due for federal and state income taxes of Contractor, Contractor's subcontractors, its partners, members, and shareholders.

16.22. COUNTERPARTS: This Professional Services Contract may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Facsimiles and electronic

transmittals of the signed document shall be binding as though they were an original of such signed document.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the date first set forth above.

For Contractor

KISER & KISER, LLC

By: Cliff Kiser

Its Member

Date _____

For Crook County Vector Control District

Crook County Vector Control District

By: _____

Signature _____

Printed Name _____

Title: _____

Date _____