

**CLACKAMAS COMMUNITY COLLEGE
PERSONAL SERVICES CONTRACT**

A CONTRACT between CLACKAMAS COMMUNITY COLLEGE ("College"), and _____,
("Provider").

WHEREAS, College and Provider believe it in their mutual interest to enter into a written contract setting out their understandings concerning Provider's provision of providing _____.

1. Term

The term of this Contract shall be from _____ until not later than _____ unless sooner terminated under the provisions of this contract. This Contract may be extended by execution of a written amendment on terms and conditions approved by both parties. The optional renewal of this Contract is expressly subject to availability of funds, as determined by College in its sole discretion.

2. Provider's Service

The scope of Provider's services and time of performance under this contract are set forth in Exhibit "A". All provisions and covenants contained in said exhibit are hereby incorporated by reference and shall become a part of this contract as if fully set forth. Any conflict between this contract and Provider's proposal (if any) shall be resolved first in favor of this written contract. Provider will, in the rendering of its services to College, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this contract and Exhibit "A".

- i. Contract Documents: This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A-Providers Service and Scope of Work, Exhibit B-Summary Fee Schedule, Exhibit C-Insurance Requirements, and Exhibit D-Providers Proposal Exhibit E-HECC Grant Assurances.
- ii. Further Assurances: Provider agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional documentation necessary for College to comply with applicable State or Federal funding requirements.

3. Provider Identification

Provider shall furnish to College Provider's employer identification number, as designated by the Internal Revenue Service or, if the Internal Revenue Service has designated no employer identification number, Provider's Social Security number.

4. Consideration

College agrees to pay Provider at the times and in the amount(s) set out in and in accordance with Exhibit "B". For the initial one-year term of the Contract, the College agrees to pay Provider, from available and authorized funds, a sum not to exceed sixty five thousand US dollars (\$65,000) for accomplishing the services required by this Contract.

Consideration rates during the term of this Contract, including any optional renewal period, are on a time and materials basis in accordance with the rates and costs specified in **Exhibit B**, Summary Fee Schedule and **Exhibit D**, Contractors Proposal. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit B and Exhibit D.

5. Project Managers

College's Project Manager is _____. Provider's Project Manager is _____. Each party shall give the other written notification of any change in their respective Project Manager.

6. Project Information

Provider agrees to share all project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the project. No information, news, or press releases related to the project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of College's Project Manager.

7. Duty to Inform

Provider shall give prompt written notice to College's Project Manager if, at any time during the performance of this contract, Provider becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by College. Any delay or failure on the part of College to provide a written response to Provider shall constitute neither agreement with nor acquiescence in Provider's statement or claim and shall not constitute a waiver of any of College's rights.

8. Provider is Independent Contractor

The service(s) to be rendered under this Contract are those of an independent contractor. Although the College reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, College cannot and will not control the means or manner of Provider's performance. Provider is responsible for determining the appropriate means and manner of performing the Work. Provider is not to be considered an agent or employee of College for any purpose, including, but not limited to: (A) The Provider will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Provider to any benefits generally granted to College employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or

retirement benefits).

9. Overtime

Any person employed on work under this contract, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC§201 to 209, shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week.

10. Insurance

Contractor shall, at its own cost and expense, maintain insurance as set forth in Exhibit C of this Agreement.

11. Work is Property of College

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Provider under this contract shall be the property of College.

12. Law of Oregon

This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between College and Provider that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the College of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Provider, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

13. Errors

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this without undue delays and without additional cost.

14. Extra or Changes in Work

Only the College Vice President or Business Office may authorize extra (and/or change) work. Failure of Provider to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Provider thereafter shall be entitled to no compensation whatsoever for the performance of such work.

15. Successors and Assignments

- i. Each party binds itself, and any partner, successor, executor, administrator, or assign to this contract.
- ii. Neither College nor Provider shall assign or transfer their interest or obligation hereunder in this contract without the written consent of the others. Provider must seek and obtain College's written consent before subcontracting any part of the work required of Provider under this contract. Any

assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

- iii. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

16. Records

- i. Provider shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. College and their duly authorized representatives shall have access to the books, documents, papers, and records of Provider, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Provider shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable 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. Provider shall allow College, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

17. Breach of Contract

- i. Provider shall remedy any breach of this contract within the shortest reasonable time after Provider first has actual notice of the breach or College notifies Provider of the breach, whichever is earlier. If Provider fails to remedy a breach in accordance with this paragraph, College may terminate that part of the contract affected by the breach upon written notice to Provider, may obtain substitute services in a reasonable manner, and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this contract.
- ii. If the breach is material and Provider fails to remedy the breach in accordance with this paragraph, College may declare Provider in default and pursue any remedy available for a default.
- iii. Pending a decision to terminate all or part of this contract, College unilaterally may order Provider to suspend all or part of the services under this contract. If College terminates all or part of the contract pursuant to this paragraph, Provider shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after College ordered suspension of those services. If College suspends certain services under this contract and later orders Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
- iv. To recover amounts due under this paragraph, College may withhold from any amounts owed by College to Provider, including but not limited to, amounts owed under this or any other contract between Provider and College.

18. Remedies

If terminated by the College due to a breach by the Contractor, then the College shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Provider's sole remedy is payment for the goods and services delivered and accepted by the College, less any set off to which the College is entitled.

19. Terminations

This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the College (i) for convenience upon ninety (90) days written notice to Provider, or (ii) at any time the College fails to receive funding, appropriations, or other expenditure authority as solely determined by the College; or (B) if Provider breaches any Contract provision or is declared insolvent, College may terminate after thirty (30) days written notice with an opportunity to cure;.

Upon receipt of written notice of termination from the College, Provider shall immediately stop performance of the Work. Upon termination of this Contract, Provider shall deliver to College all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon College's request, Provider shall surrender to anyone College designates, all documents, research, objects or other tangible things needed to complete the Work.

20. Intellectual Property

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this contract shall vest in the College. Provider shall execute any assignment or other documents necessary to effect this paragraph. Provider may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Provider shall transfer to the College any data or other tangible property generated by Provider under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

21. Public Contracting Requirements

Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 2798.220 through 279B.235, Provider shall:

- i. Make payments promptly, as due, to all persons supplying to Provider labor or materials for the prosecution of the work provided for in the Contract.
- ii. Pay all contributions or amounts due the Industrial Accident Fund from such Provider or subcontractor incurred in the performance of the Contract.
- iii. Not permit any lien or claim to be filed or prosecuted against College on account of any labor or material furnished.
- iv. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- v. As applicable, the Provider shall pay employees for work in accordance with ORS 2798.235, which is incorporated herein by this reference.
- vi. The Provider shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling College to terminate this Contract for cause.
- vii. Provider shall pay employees for overtime work performed under the terms of this contract in accordance with ORS 653.010 to ORS 653.261 and the Fair labor standards Act of 1938. (29 USC §§ 201 *et. seq.*)
- viii. Provider is a subject employer that will comply with ORS 656.017. Provider warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Provider shall indemnify College for any liability incurred by College as a result of Provider's breach of the warranty under this Paragraph. (ORS 279B.230)

- ix. Provider is a subject employer that will comply with ORS 656.017. Provider warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Provider shall indemnify College for any liability incurred by College as a result of Provider's breach of the warranty under this Paragraph. (ORS 279B.230)
- x. If the Work involves lawn and landscape maintenance, Provider shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

22. Payment of Claims by the College

If Provider fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Provider or a subcontractor by any person in connection with this contract as the claim becomes due, the College may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Provider pursuant to this contract. The College's payment of a claim under this Paragraph shall not relieve Provider or Provider's surety, if any, from responsibility for those claims.

23. Tax Representation

The Provider shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Provider represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle College to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

24. Foreign Contractor

If the Provider is not domiciled in or registered to do business in the State of Oregon, Provider shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Provider shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. Force Majeure

Neither College nor Provider shall be held responsible for delay or default caused by events outside the Parties reasonable control including, but not limited to, fire, terrorism, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including, but not limited to quarantine or other restrictions as directed by state or federal government; compliance with any law or governmental order, rule, regulation or direction riot, acts of God, or war. However, Provider shall 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.

26. Pay Equity

- i. As required by [ORS 279B.235 or ORS 279C.520], Provider shall comply with ORS 652.220 and shall not discriminate against any of Provider's employees in the payment of wages or other compensation for work of comparable character, the performance of which requires comparable skills, or pay any employee at a rate less than another for comparable work, based on an employee's membership in a protected class.
- ii. Commencing on January 1, 2019, Provider must comply with ORS 652.220 as amended and shall not unlawfully discriminate against any of Provider's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Provider's compliance with this section constitutes a material element of this Contract/Price Agreement and a failure to comply constitutes a breach that entitles Agency to terminate this Contract/Price Agreement for cause.
- iii. Provider may not prohibit any of Provider's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Provider 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.

27. Modification

Any modification of the provisions of this contract shall be reduced to writing and signed by the parties.

28. No Waiver of Legal Rights

The failure of College to enforce any provision of this Contract shall not constitute a waiver by College of that or any other provision.

29. Merger

HIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. PROVIDER, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

30. Notices.

Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrator or Project Manager identified in Section 5. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday- Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other

indication that the email has not been delivered.

Clackamas Community College
Attention: Contracts Administrator
19600 Molalla Avenue
Barlow Hall Rm 206f
Oregon City, OR 97045-7998
wesley.buchholz@clackamas.edu
Phone: 503-594-0989

Clackamas Community College
Attention:

Provider
Attention:

34. Indemnification

- i) Provider shall indemnify, defend, save and hold harmless the College and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Provider or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the parties that the College shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the College, be indemnified by Provider from and against any and all Claims.
- ii) Neither Provider, nor any attorney engaged by Provider, shall defend any claim in the name of the College nor purport to act as legal representative of the College or any of its agencies, without the prior written consent of the Oregon Attorney General. The College may, at any time at its election, assume its own defense and settlement in the event that it determines that Provider is prohibited from defending College or that Provider is not adequately defending College's interests, or that an important governmental principle is at issue or that it is in the best interests of College to do so. The College reserves all rights to pursue claims it may have against Provider if the College elects to assume its own defense.
- iii) Provider shall obtain and maintain insurance of the types and in the amounts provided in Exhibit B of this Agreement. Any insurance obtained by Provider, if any, shall not relieve Provider of the requirements of this Section of the Contract. Provider, if it employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in Exhibit B of the Agreement.
- iv) Provider shall comply with Title VII of the Civil Rights Act of 1964 and all

other state and federal antidiscrimination requirements and shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Failure by Provider to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as College deems appropriate.

35. Counterparts/Integration

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, which together shall constitute a binding agreement. Each person signing below represents that she or he has the authority to sign this Agreement for and on behalf of the party for whom she or he is signing.

CLACKAMAS COMMUNITY COLLEGE

PROVIDER

Date signed: _____

Date signed: _____

Signature: _____

Signature: _____

Name: Jeff Shaffer

Name: Sun Young Yoon

Title: Interim Vice President of Finance,
Operations & Strategic Partnerships (CFO)

Title: Principal

**EXHIBIT A
PROVIDER'S SERVICE**

PROJECT DESCRIPTION AND OVERVIEW OF SERVICES:

SCOPE OF WORK

**EXHIBIT B
SUMMARY FEE SCHEDULE**

- The maximum, not-to-exceed compensation payable to Provider under this contract, which includes any allowable expenses, is \$_____. College will not pay Provider any amount in excess of the not-to-exceed compensation for completing the work.
- The College will not pay the Provider for work performed before the term of this contract starts or after the term of this contract ends.
- The College will pay only for completed work that is accepted by the College.
- Provider will submit monthly invoices to the College for work performed by the 10th of each month. The invoices shall describe all work performed and shall explain all expenses that this contract requires the College to pay and for which Provider claims reimbursement. Each invoices shall also include the total amount invoiced to date by Provider for work performed under this contract prior to the current invoice. Invoices shall be emailed to with a cc to