RESOLUTION NO. URR 11-002

A RESOLUTION AUTHORIZING A PERSONAL SERVICES AGREEMENT BETWEEN THE CANBY URBAN RENEWAL AGENCY AND FRANCIS C. BERG, ARCHITECT, P.C. TO PROVIDE CONSTRUCTION MANAGEMENT FOR THE POLICE FACILITY PROJECT

WHEREAS, the Canby City Council established the Canby Urban Renewal Agency ("Agency") as an urban renewal agency to function within the City pursuant to Ordinance 1032 passed October 6, 1999; and

WHEREAS, the Agency has been directed to undertake development of a new Police Facility located on a site at 1175 NW 3rd Avenue; and

WHEREAS, the Agency issued a Request for Proposals, RFP No. 001, soliciting the services of a construction manager to assist in developing the design for, and to eventually represent the Agency in management of, construction of the Police Facility; and

WHEREAS, Francis C. Berg, Architect, P.C. ("Berg") was selected as the preferred proposal based on the criteria for selection stated in the RFP; and

WHEREAS, the Agency staff and Berg have agreed to the terms and conditions for Berg providing construction management services as expressed in the form of Personal Services Agreement attached to this Resolution as Exhibit A and by this reference incorporated herein;

NOW THEREFORE, IT IS HEREBY RESOLVED by the Canby Urban Renewal Agency as follows:

1. The Agency authorizes the Personal Services Agreement between the Agency and Berg in the form attached as Exhibit A; and

2. The Executive Director of the Agency is authorized and directed to execute the Personal Services Agreement on behalf of the Agency and to carry out such necessary actions to complete the Agency's obligations under said Personal Services Agreement.

This Resolution shall take effect on February 16, 2011.

ADOPTED this 16th day of February, 2011, by the Canby Urban Renewal Agency.

Richard Ares
Chair

ATTEST:

Melissa York
Deputy City Recorder

PERSONAL SERVICES AGREEMENT

CONSTRUCTION MANAGEMENT SERVICES

City of Canby Police Facility

This Personal Services Agreement for Construction Management Services ("Contract") is between the City of Canby, Oregon, Urban Renewal Agency, hereafter called "Agency," and Francis C. Berg, Architect, P.C., hereafter called "Contractor". The Agency's Project Manager for this contract is Robert Bitter, Urban Renewal Manager.

Effective Date and Duration
This Contract is effective as of February 16, 2011. This Contract shall expire, unless otherwise terminated or extended, on June 30, 2012.

Statement of Work
(a) The statement of work is contained in EXHIBIT A attached hereto and by this reference made a part hereof.
(b) The delivery schedule for the work is identified in EXHIBIT A.

Consideration
(a) Agency agrees to pay Contractor a sum not to exceed $137,380.00, (including reimbursable costs, see EXHIBIT A), for accomplishment of the work.
(b) Interim payments shall be made to Contractor according to the procedures identified in EXHIBIT B.

Terms and conditions listed on pages 2 – 5.

CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE

Name (please print): Francis C. Berg, Architect, P. C.
Address: 6393 Silverton Rd. NE, Salem, Oregon 97305
Social Security #: [redacted]
Federal Tax ID #: 93-081101 State Tax ID #: 0362900-5 Business License #: 4373
Business Designation (check one): Individual Sole Proprietorship Partnership _____ Corporation X
Limited Liability Co (LLC) _____ Estate/Trust _____ Public Service Corp. _____Government/Nonprofit _____
Payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to contract approval. Information not matching IRS records could subject you to 20 percent backup withholding.

I, the undersigned, agree to perform work outlined in this contract in accordance to the terms and conditions (listed on pages 2-4 and made part of this contract by reference) and the statement of work made part of this contract by reference; hereby certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; and hereby certify I am an independent contractor as defined in ORS 670.600.

Approved by the Contractor: Francis C. Berg — Signature/Title — Feb. 7, 2011 — Date

URBAN RENEWAL AGENCY SIGNATURES

Approved by Purchasing Agent: Greg Ellis — Director — 02/17/11 — Date

Approved as to Form By Legal Counsel: Jannette M. Lee — Legal Counsel — 02/21/11 — Date

CANBY URBAN RENEWAL AGENCY
STANDARD CONTRACT PROVISIONS FOR
PROFESSIONAL, TECHNICAL & EXPERT SERVICES (MANDATORY PROVISIONS)

1. Access to Records
The Contractor shall maintain, and the City of Canby Urban Renewal Agency ("Agency") and its duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the Agency.

2. Audits
(a) The Agency, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement and during the three (3) year period established by section 1, **Access to Records**. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.
(b) If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the Agency.
(c) If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the Agency may pursue remedies provided under section 5, **Early Termination of Agreement** and section 7, **Remedies**.

3. Effective Date and Duration
The passage of the contract expiration date (as recorded on Page 1) shall not extinguish, prejudice, or limit either party's right to enforce this contract with respect to any default or defect in performance that has not been cured.

4. Order of Precedence
This contract consists of the terms and conditions of this contract, the Request for Proposals (RFP) issued by the Agency, if any, and the Contractor's proposal in response to the RFP. In the event of any apparent or alleged conflict between these various documents, the following order of precedence shall apply to resolve the conflict: a) this contract's terms and conditions, b) the Agency's RFP, and c) the Contractor's proposal in response to the RFP.

5. Early Termination of Agreement
(a) The Agency and the Contractor, by mutual written agreement, may terminate this Agreement at any time.
(b) The Agency, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
(c) Either the Agency or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

6. Payment on Early Termination
(a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Agreement** hereof, the Agency shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.
(b) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Contractor due to a breach by the Agency, then the Agency shall pay the Contractor as provided in subsection (a) of this section.
(c) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Agency due to a breach by the Contractor, then the Agency shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), **Remedies**.
(d) In the event of early termination all of the Contractor's work product will become and remain property of the Agency.

7. Remedies

(a) In the event of termination under subsection 5(c), **Early Termination of Agreement**, hereof, by the Agency due to a breach by the contractor, then the Agency may complete the work either itself, by agreement with another contractor or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay the Agency the amount of the reasonable excess.

(b) The remedies provided by the Agency under section 5, **Early Termination of Agreement** and Section 7, **Remedies** for a breach by the Contractor shall not be exclusive. The Agency also shall be entitled to any other equitable and legal remedies that are available.

(c) In the event of breach of this Agreement by the Agency, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 5(c), **Early Termination of Agreement** and section 6(b), **Payment on Early Termination** hereof.

8. Subcontracts and Assignment

Contractor shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the Agency. Notwithstanding Agency approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the Agency shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

9. Compliance with Applicable Law

In connection with its activities under this Agreement, Contractor shall comply with all applicable federal, state, and local laws and regulations, all of which are incorporated by this reference. Contractor shall complete Exhibit C, Independent Contractor Certification Statement, which is attached hereto and by this reference made a part hereof. **Contractor is required to obtain a City of Canby business license.**

9a. Indemnity – Claims for Other than Professional Liability

Contractor shall defend, save, and hold harmless the Agency, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the Agency for any claims or losses arising out of death, or bodily injury to persons, or property damage caused by the negligence of the Agency.

9b. Indemnity – Claims for Professional Liability

Contractor shall defend, save, and hold harmless the Agency, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the Agency for any claims or losses caused by the negligence of the Agency.

9c. Indemnity – Standard of Care

If Contractor's services involve engineering or consulting, the standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation.

10. Insurance

Exhibit D is hereby referenced and made a part of this contract.

11. Ownership of Work Product

All work products produced by the Contractor under this contract is the exclusive property of the Agency. "Work product" shall include but not be limited to research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form; the Contractor and the Agency intend that such work product shall be deemed "work made for hire" of which the Agency shall be deemed the author. If for any reason a work product is deemed not to be a "work made for hire," the Contractor hereby irrevocably assigns and transfers to the Agency 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. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the Agency. Contractor 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.

12. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub I. No. 101-336) including Title II of that Act, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

13. Successors in Interest

The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

14. Severability

The parties agree that if any term or provision of this contract 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 contract did not contain the particular term of provision held to be invalid.

15. Waiver

The failure of the Agency to enforce any provision of this contract shall not constitute a waiver by the Agency of that or any other provision.

16. Errors

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

17. Governing Law

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Clackamas County, Oregon.

18. Amendments

All changes to this contract, including changes to the scope of work and contract amount, must be made by written amendment and approved by the Purchasing Agent to be valid. Any amendment that increases the original contract amount by more than 25% must be approved by the Agency Board to be valid.

19. Business License

The Contractor shall obtain a City of Canby business license prior to beginning work under this Agreement. The Contractor shall provide a business license number in the space provided on page one of this Agreement. Additionally, the Contractor shall pay all fees or taxes due under the Business License Law during the full term of this contract. Failure to be in compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law.

20. Prohibited Interest

(a) No Agency officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

(b) No Agency officer or employee who participated in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

21. Payment to Vendors and Subcontractors

The Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the Agency or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the Agency's prior written consent.

Merger Clause
THIS CONTRACT WITH ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT 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 SPECIFIC INSTANCES AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE OR SHE HAS READ THIS CONTRACT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

OPTIONAL PROVISIONS

22. Arbitration: _X_/Applicable /___/Not Applicable (a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the Agency within sixty (60) days or notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Clackamas. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Canby, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for Clackamas County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the Agency. Insofar as the Contractor and the Agency legally may do so, they agree to be bound by the decision of the arbitrator. **(b)** Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute, and the Agency shall make payments as required by the Agreement for undisputed portions of work.

23. Progress Reports: /_X_/ Applicable /___/ Not Applicable
The Contractor shall provide monthly progress reports to the Project Manager. If applicable, Exhibit A should list what information the Contractor must include in monthly progress reports.

24. Contractor's Personnel: /_X_/ Applicable /___/ Not Applicable
The Contractor shall assign the personnel listed in Exhibit A to do the work in the capacities designated. The Contractor shall not change personnel assignments without the prior written consent of the Agency.

25. Subcontractors: /___/ Applicable /_X_/ Not Applicable
The Contractor shall assign the following subcontractors to perform work in the capacities designated. If applicable, list selected subcontractors in Exhibit A. The Contractor shall not change subcontractor assignments without the prior written consent of the Agency.

EXHIBIT A
STATEMENT OF THE WORK

SCOPE OF WORK

Attached as Exhibit A-1.

SCHEDULE

Attached as Exhibit A-2.

CONTRACTOR PERSONNEL

The Contractor shall assign the following personnel to do the work in the capacities designated:

NAME	ROLE ON PROJECT
Frank Berg	Project Manager
Bill Harper	Program Manager
Andrea Tenbrink	Administrative Assistant

SUBCONTRACTORS ***[If none, indicate "NONE"]***

The Contractor shall assign the following subcontractors to perform work in the capacities designated:

NAME	ROLE ON PROJECT
NONE	

COMPENSATION

Contractor shall be paid the not to exceed amount of $137,380.00. The Contractor will be paid based on its hourly rates, costs incurred in paying its subcontractors, if any, plus any authorized reimbursable expenses, as set forth in more detail below. The "not to exceed amount" is the maximum amount of compensation due the Contractor for all the work required by the contract. Errors in estimating the number of hours necessary to perform the work is the sole responsibility of the Contractor.

a. Hourly Rates

The billing rates shall not exceed the following:

Frank Berg: $95/hour;
Bill Harper: $95/hour;
Andrea Tenbrink: $45/hour

b. Standard Reimbursable Costs

The following costs will be reimbursed without mark-up.

- Mileage @ IRS standard rate, 2011 - $.51 per mile.
- All other costs to provide services, mail, deliveries, long distance telephone, travel only with prior approval of the Agency, copies, and supplies expended in the service of the City's Police Department Project to be billed at cost.

c. Subcontractor Costs

This Contract does not include compensation for subcontractors.

EXHIBIT A-1

SCOPE OF WORK

The Canby Urban Renewal Agency ("Agency"), and Francis C. Berg, Architect, P.C., (Contractor), agree that the following Professional Services shall be provided by the Contractor. For purpose of this contract, "Basic Services" are those Services described in A-1.01 through A-1.05.

PROJECT DISCRIPTION:
The Agency wishes to have Project Management Services for the **New Police Facility** located in Canby, Oregon, and desires the Project Manager to be the "owner's authorized representative" as that term is used in the Contract Documents for design and construction.

A-1 "Basic Services"

A-1.01 Services prior to the Design Phase:

- Assist with the development of an overall Project Work Plan.
- Assist the Agency with defining the Project's Goals and Objectives.
- Work with the Agency to refine an overall Project Budget and Schedule.
- Meet and work with the Agency's and City's staff and the Project Stakeholders to define a preliminary program.
- Assist in the selection of the A&E Team.
- Assist with the development of an Agreement for the A&E Services.

A-1.02 Services during the Design Phase:

- Coordinate services of the architect, engineers and consultants.
- Attend regularly scheduled meetings with the Agency's and City's management staff. The Program Manager will provide a weekly update report for the Agency/City staff and administration, as well as the Agency/City Council, stating the current or proposed accomplishments.
- Recommend options to balance budget if design exceeds the budget.
- Assist the architect in submission of plans to Governing Agencies for conditional use approval, design review and building permits, as needed.
- Present project status reports to the Canby City Council.
- The Program Manager will attend all programming and design meetings with the architect and engineers Assist Agency's staff to understand drawings and specifications. The Program Manager will travel to the architect's office as needed to review and confirm design ideas prior to work sessions or presentations with the City staff and administration.
- Review cost estimates prepared by consultant or construction contractor.
- A project schedule will be developed by the Contractor and architect and reviewed and monitored on a weekly basis.
- Monitor status of drawings and specifications to confirm that architect and engineers stay on schedule.
- Assist the Agency, City and architect in the value engineering process.
- Assist the Agency and architect to develop a quality assurance program for the construction phase.
- Assist the Agency and architect to identify and order long lead items.
- Coordinate value engineering and constructability reviews.

A-1.03 Services during the Construction Phase:

- Attend regularly scheduled (weekly) construction meetings. Perform site visits as needed.
- Facilitate resolution of issues that may impact budget or schedule.
- Review change order requests for justification and reasonable pricing.
- Assist in the process change orders for Agency's approval.

- Manage submittal review process that the Agency would be interesting in reviewing to meet schedule objectives.
- Maintain comprehensive project documentation on behalf of the Agency.
- Monitor progress of construction activities in comparison with the contractor's construction schedule.
- Prepare a weekly or bi-weekly field report that includes status, weather, current photos and any issues to be resolved Require contractor to prepare recovery schedule if construction falls behind schedule.
- Assist the Agency to administer terms and conditions of the construction agreement. Contractor will monitor the required services of the Architect's and construction contractor's contracts. If a discrepancy arises between the parties, Contractor will step-in to assist both parties with conflict resolution.
- Contractor will manage all separate contracts for the Agency, however, specific trade contracts and sub-contracts fall under the authority of the construction contractor and management of those contracts would be considered tortuous interference by the Agency.
- Provide options and recommended solutions regarding issues in the construction phase to the Agency.
- Document and distribute Agency decisions to the project team.
- Process payment applications and billings from construction contractor and consultants.
- Update City staff on a weekly basis. Present project status reports to the Agency and or the City Council, as directed.
- Assist the architect to prepare the punch list.
- Assist the architect to prepare the Substantial Completion Certificate.

A-1.04 Services during Project Close-out:

- Assist to coordinate project close-out phase. Specifically, from substantial completion to final completion, Contractor will monitor, verify and meet with the consultants and construction contractors to finalize the remaining issues.
- Obtain record drawings and transmit to Agency for the benefit of the City.
- Coordinate building systems training of City's staff. Typical staff training includes the fire alarm system, mechanical and electrical systems.
- Coordinate receipt of occupancy permits.
- Assist the City with move in and occupancy of the completed facility.
- Contractor will assist the City with procurement, scheduling and delivery of the furniture, fixtures and equipment not covered under the architect's or construction contractor's agreement.
- Transmit appropriate files to the Agency for the benefit of the City.
- Assist in resolution of cost issues between the Agency and Contractor(s).
- Assist the Agency for the benefit of the City to establish and implement procedures for the warranty period.
- Assist the architect to prepare Final Completion Certificate.

A-1.05 Services Post Construction Phase:

- Coordinate with the construction contractor to develop a system to process all warranty issues on behalf of the Agency's staff. Contractor will assist the City, if requested, on any issues that arise during the warranty period following the occupancy of the building.
- Work with the City's staff to provide whatever debugging is necessary for the appropriate operations of the facility.

A-1.06 Other Services (would be considered in addition to the *standard* scope of services, and available on request):

- Assist Agency with project presentation to boards and commissions other than the City.
- Assist Agency with possible coordination, research and reports.
- Develop communication procedures between Agency and its staff.
- Assist Agency in communications with outside entities other than the City.
- Provide photographic documentation for the Agency.
- Comprehensive estimates at 90% to 95% complete construction documents.
- Approximately 60 days prior to expiration of the Contractor's warranty(s), facilitate and participate in, a project warranty walk-thru and warranty conference including a representative of the Agency, Architect/Engineer and Contractor.

EXHIBIT A-2

SCHEDULE

The Contractor shall provide the above described Services starting on the date of the Agreement, and will be completed 60 days after the date of Project's Substantial Completion. Anticipated date of Substantial Completion is May 1, 2012.

EXHIBIT B

BILLING AND PAYMENT PROCEDURE

BILLING AND PAYMENT PROCEDURE:

For each project, the Contractor will follow the following procedure to secure payment:

a. The Contractor shall submit to the Agency for payment an itemized invoice in a form and in sufficient detail to determine the work performed for the amount requested. The invoice shall contain at a minimum:
   - Invoice date
   - Agency Contract number
   - Number of hours worked on the project
   - Billing rate applied
   - Description of reimbursable items. The Contractor shall also attach photocopies of claimed reimbursable expenses, if applicable.
   - Copies of subcontractor invoices that are included in the amount of the invoice. The Agency's Project Manager shall stamp and approve all subcontractor invoices and note on the subcontractor invoice what they are approving as "billable" under the contract. The billing from the prime should clearly roll up labor and reimbursable costs for the prime and subcontractors – matching the subcontractor invoices.
   - Balance of hours remaining on each individual project

b. Prior to initial billing, the Contractor shall develop a billing format for approval by the Agency. The form shall be approved by the Agency Project Manager.

c. Invoices may be submitted monthly, no later than the 10th of each month, or at such other interval as is specified by the Agency Project Manager.

d. The Agency shall process payment in its normal course and manner for accounts payable and pay all amounts to which no dispute exists within 30 days of receipt of the invoice. Payment of any invoice, however, does not preclude the Agency from later determining that an error in payment was made and from withholding the disputed sum from the next progress payment until the dispute is resolved.

e. The Contractor shall make full payment to its subcontractors within 10 business days following receipt of any payment made by the Agency to Contractor.

EXHIBIT C
INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

SECTION A

ORS 670.600 Independent contractor standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contracted work meets the following standards:

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;

4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

Robert Bitter
Agency Project Manager Signature

3/14/11
Date

SECTION B

Independent contractor certifies he/she meets the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;

2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and

3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor shall check four or more of the following:

__X__ A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

__X__ B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

__X__ C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

__X__ D. Labor or services are performed only pursuant to written contracts;

__X__ E. Labor or services are performed for two or more different persons within a period of one year; or

__X__ F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Francis C. Berg
Contractor Signature

Feb. 7, 2011
Date

EXHIBIT D

INSURANCE

During the term of this contract Contractor shall maintain in force at its own expense, each insurance noted below:

1. **Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. (Required of contractors with one or more employees, unless exempt under ORS 656.027).

_X_ Required and attached; or

___ Contractor is exempt and has provided Agency satisfactory evidence of such exemption.

Certified by Contractor: Francis C. Berg / President
Signature/Title

The Agency must specify required insurance below:

2. **General Liability** insurance on an occurrence basis with a combined single limit of not less than $2,000,000 each occurrence for bodily injury and property damage. The Liability Insurance coverage shall provide contractual liability coverage for the indemnity required under this contract. The coverage shall name the Agency as Additional Insured with respect to the Contractor's services to be provided under the contract.

_X_ Required and attached or Waived: _____

3. **Automobile Liability** insurance with a combined single limit per occurrence of not less than $1,000,000, each occurrence for bodily injury and property damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

_X_ Required and attached or Waived: _____

4. **Professional Liability** insurance with a combined single limit of not less than $1,000,000 per claim, incident or occurrence. This is to cover damages caused by the error, omission or negligent acts related to the professional services to be provided under this Contract. If insurance is on a "claims made" basis, the Contractor shall acquire "tail" coverage or continue the same coverage for three years after the completion of the Contract, provided that such coverage is available and economically feasible. If such coverage is not available and economically feasible, the Contractor shall immediately notify the Agency Project Manager.

_X_ Required and attached or Waived: _____

5. **On All Types of Insurance**. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Contractor or its insurer(s) to the Agency.

6. **Certificates of Insurance**. As evidence of the insurance coverage required by this contract, the Contractor shall furnish acceptable insurance certificates to the Agency at the time contractor returns signed contracts. The Certificate shall provide that the insurance shall not terminate or be cancelled without 30 days written notice first being given to the Agency. Insuring companies or entities are subject to Agency acceptance. If requested, complete copies of the insurance policy shall be provided to the Agency. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.