

AGENDA ITEM FOR ADMINISTRATIVE MEETING

() Discussion only
(x) Action

FROM (DEPT/ DIVISION): Umatilla County

PROGRAM: Emergency Management

SUBJECT Approval of Contract

<p>Umatilla County Emergency Management is seeking the approval of a contract with Dean Marcum for a Local Emergency Planning Committee table top exercise on November 17, 2024. This is a grant-funded contract with no match.</p>	<p>() <u>ACTION REQUESTED:</u> Approve contract with Dean Marcum in the amount of \$8,000 to facilitate an LEPC exercise on November 17</p>
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ATTACHMENTS: Proposed Contract

Date: (9/30/24) Submitted By: (Sage DeLong)

*****For Internal Use Only*****

Checkoffs:

- () Dept. Head (copy)
- () Human Resources (copy)
- () Fiscal
- () Legal (copy)
- () Other - List:

To be notified of Meeting:

Needed at Meeting:

Scheduled for meeting on: October 2, 2024

Action taken:

Follow-up:

Umatilla County
Personal/Professional Services Contract
Table Top Exercise

This contract is between UMATILLA COUNTY, acting by and through its Board of County Commissioners, hereafter called County, and DEAN H. MARCUM, hereinafter called Contractor. The County's supervising representative for this contract is Sage Delong, 4700 NW Pioneer Place, Pendleton, Oregon, 97801.

1.0 Effective Date and Duration

1.1 This contract is dated and shall become effective on August 1, 2024.

1.2 This contract shall expire, unless otherwise terminated or extended, on December 31, 2024.

1.3 Contract termination or expiration shall not extinguish or prejudice a party's right to enforce this contract with respect to any default or defect in performance that has not been cured by the other party.

2.0 Contract Documents

This contract includes the attached Exhibit A (Statement of Work), Exhibit B (Required Insurance), Exhibit C (Independent Contractor Certification Statement) and Exhibit D (Required Grant Terms), which are by this reference made a part of the contract.

3.0 Notice

Except as otherwise expressly provided in this contract, any communications between the parties or notices to be given under this contract shall be given in writing by personal delivery, or mailing the same, postage prepaid, to Contractor and County at the address set forth in this Contract, or to such other address numbers as either party may indicate. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice given by personal delivery shall be effective when actually delivered.

4.0 Statement of Work

4.1 Contractor shall perform the statement of work for table top exercises as set out in Exhibit A in accordance with the terms and the conditions of this contract.

4.2 The delivery schedule for the work is identified in Exhibit A.

5.0 Consideration

5.1 County agrees to pay Contractor the amounts as set forth in Exhibit A.

5.2 If the maximum compensation amount is increased by amendment of this contract, the amendment must be fully effective before Contractor performs work subject to the amendment. No

payment will be made for any services performed before the beginning date or after the expiration date of this contract.

5.3 Contractor shall submit monthly billing for work performed. The billings shall describe with particularity all work performed, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed and that this contract requires the County to pay. The billings shall include the total amount billed to date by Contractor prior to the current invoice. Billings shall be sent to County's supervising representative.

5.4 Contractor shall not be compensated for work performed under this contract by any other Department of Umatilla County.

5.5 Contractor shall be responsible for all federal or state taxes or retirement pension benefits applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, retirement pension benefits, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

6.0 Independent Contractor

6.1 Contractor shall perform all work as an independent contractor. The County reserves the right (i) to determine and modify the delivery schedule for the work and (ii) to evaluate the quality of the work product, however, the County may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

6.2 If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal for which Contractor currently performs work would prohibit Contractor's Work under this contract.

6.3 Contractor is not an officer, employee, or agent of County as those terms are defined in ORS 30.265.

7.0 Funds Available and Authorized

7.1 The County certifies at the time this contract is written that sufficient funds are available and authorized for expenditure to finance costs of this contract.

7.2 Contractor understands and agrees that County's payment of amounts under this contract is contingent on County receiving appropriations sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to make payments under this contract. If funds are not available the County may terminate this contract as provided in paragraph 13.4.

8.0 Representations and Warranties.

8.1 Contractor represents and warrants to County that:

- (1) Contractor has the power and authority to enter into and perform this contract;

(2) This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;

(3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession;

(4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;

(5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

8.2 The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

9.0 Indemnity.

9.1 GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE COUNTY AND THE STATE AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

9.2 INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF PARAGRAPH 11.1, CONTRACTOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD COUNTY AND ITS AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO COUNTY BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE COUNTY'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT COUNTY SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

10.0 Compliance with Applicable Law

10.1 Contractor shall comply with all federal, state, and local laws and ordinances applicable to this contract.

10.2 Without limiting the generality of paragraph 10.1, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent

they are applicable to this contract: (I) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference to the extent that they are applicable to this contract and required by law to be so incorporated.

10.3 County's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, which are incorporated into this contract by this reference.

11.0 Records

11.1 Contractor shall maintain all financial records relating to this contract in accordance with generally accepted accounting principles, and any other records pertinent to this contract in such a manner as to clearly document Contractor's performance.

11.2 County, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives, shall have access to the books, documents, papers, and records of the Contractor that are pertinent to this contract for the purpose of making audit, examination, excerpts and transcript.

11.3 Contractor shall retain and keep accessible all records for such period as required by applicable law following final payment and termination of this contract.

12.0 Ownership of Work Product

All work products of the Contractor that result from this contract, including derivative works and compilations, and whether or not such work product is considered a work made for hire or an employment to invent, are the exclusive property of County. County and Contractor agree that such original works of authorship are "work made for hire" of which County is the author within the meaning of the United States Copyright Act.

13.0 Default and Termination

13.1 Time is of the essence under this contract.

13.2 Default by Contractor.

(1) Contractor shall be in default under this Contract if:

(A) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

(B) Contractor no longer holds a license or certificate that is required for Contractor

to perform its obligations under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after County's notice or such longer period as County may specify in such notice; or

(C) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this contract within the time specified, or so fails to pursue the work as to endanger Contractor's performance under this contract in accordance with its terms, and such breach, default or failure is not cured within fourteen

(14) calendar days after County's notice, or such longer period as County may specify in such notice.

(2) County's Remedies for Contractor's Default. In the event Contractor is in default under this Paragraph 13.2, County may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- (A) Termination of this Contract under Paragraph 13.4;
- (B) Withholding all monies due for work and work products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
- (C) Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; (D) Exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order. If a court determines that Contractor was not in default under this paragraph 13.2, then Contractor shall be entitled to the same remedies as if this contract was terminated pursuant to paragraph 13.4.

13.3 Default by County.

(1) County shall be in default under this Contract if:

- (A) County fails to pay Contractor any amount pursuant to the terms of this contract,

and County fails to cure such failure within fourteen (14) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or

(B) County commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within fourteen (14) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

(2) Contractor's Remedies for County's Default. In the event County terminates the Contract under paragraph 13.4, or in the event County is in default under this paragraph 13.3 and whether or not Contractor elects to exercise its right to terminate the Contract under paragraph 13.4, Contractor's sole monetary remedy shall be (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this contract but not yet billed, authorized expenses incurred and interest within the limits permitted under ORS 82.010; and (b) with respect to deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by

County, less previous amounts paid and any claim(s) that County has against Contractor. In no event shall County be liable to Contractor for any expenses related to termination of this contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this paragraph 13.3, Contractor shall pay immediately any excess to County upon written notice sent in accordance with paragraph 3.0.

13.4 Termination.

(1) County's Right to Terminate at its Discretion. At its sole discretion, County may terminate this Contract:

- (A) For its convenience upon thirty (30) days' prior written notice by County to Contractor;
- (B) Immediately upon written notice if County fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the work or work products; or
- (C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the County's purchase of the work or work products under this Contract is prohibited or County is prohibited from paying for such work or work products from the planned funding source.

(2) County's Right to Terminate for Cause. In addition to any other rights and remedies County may have under this Contract, County may terminate this Contract immediately upon written notice by County to Contractor, or at such later date as County may establish in such notice, or upon expiration of the time period and with such notice as provided below, upon the occurrence of any of the following events:

- (A) Contractor is in default under paragraph 13.2 because Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- (B) Contractor is in default under paragraph 13.2 because Contractor no longer holds a license or certificate that is required for it to perform services under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after County's notice or such longer period as County may specify in such notice; or
- (C) Contractor is in default under paragraph 13.2 because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after County's notice, or such longer period as County may specify in such notice.

(3) Contractor's Right to Terminate for Cause. Contractor may terminate this Contract with such written notice to County as provided below, or at such later date as Contractor may establish in such notice, upon the occurrence of the following events:

- (A) County is in default under paragraph 13.3 because County fails to pay Contractor any amount pursuant to the terms of this Contract, and County fails to cure such failure within fourteen (14) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
- (B) County is in default under paragraph 13.3 because County commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and County fails to cure such failure within fourteen (14) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

13.5 Return of Property. Upon termination of this Contract for any reason, Contractor shall immediately deliver to County all of County's property (including any work or work products for which County has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such County property is expressed or embodied at that time.

13.6 Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work and the work products.

13.7 In any suit or action of any type arising under this contract, each party shall pay its own attorney fees and costs.

13.8 The failure of either party to enforce any provision of this contract shall not constitute a waiver by that party of that or any other provision.

14.0 Force Majeure

Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts or other acts of political sabotage, or war, which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the contract.

15.0 Amendments

The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties.

16.0 Assignments and Successor Interests

16.1 Contractor shall not enter into any subcontracts for any work scheduled under this contract, or assign or transfer any of its interest in this contract, without the prior written consent of the County.

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

17.0 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 or provision held to be invalid.

18.0 Controlling Law/Venue

18.1 The provisions of this contract shall be governed and construed in accordance with the provisions of the law of the State of Oregon.

18.2 Venue for any action or suit concerning the interpretation or enforcement of this contract must be brought in Circuit Court in Umatilla County, Oregon. BY EXECUTION OF THIS CONTRACT, CONTRACTOR CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT.

19.0 Merger Clause

19.1 This contract and attached exhibits constitutes the entire agreement between the parties.

19.1 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 the specific instance and for the specific purpose given.

19.3 There are no understandings, agreements, or representations, oral or written, not specified herein regarding this contract.

20.0 Contractor Data and Certification

20.1 Contractor Tax Identification Information. Contractor shall provide Contractor's Social Security number or Contractor's federal tax ID number and the additional information set forth below. Social Security Numbers provided pursuant to this paragraph will be used for the administration of state, federal and local tax laws.

Name (tax filing): Dean H. Marcum

Address:

Business Designation (check one):

Professional Corporation Partnership Limited Partnership Limited Liability Company

Limited Liability Partnership Sole Proprietorship Other Federal

Tax ID#: _____

County may report the information set forth above to the Internal Revenue Service (IRS) under the name and social security number or taxpayer identification number provided.

20.2. Certification. The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that:

(a) The number shown on this form is Contractor's correct taxpayer identification;

(b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding; (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends; or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding;

(c) The person signing this document is authorized to act on behalf of Contractor and has the authority and knowledge regarding Contractor's payment of taxes and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws named in ORS 305.380(4), including without limitation the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief

program and local taxes administered by the Department of Revenue;

(d) Contractor is an independent contractor as defined in ORS 670.600; and (e)
The supplied Contractor data is true and accurate.

20.3 CONTRACTOR, BY SIGNING THIS CONTRACT, ACKNOWLEDGES THAT
CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE
BOUND BY ITS TERMS AND CONDITIONS.

Approved by the Contractor:

Dean H. Marcum

7/1/2024

Dean H. Marcum

Date

UMATILLA COUNTY

John M. Shafer, Commissioner

Date

Daniel N. Dorrان, Commissioner

Date

Celinda A. Timmons, Commissioner

Date

ATTEST:

Office of County Records

Records Officer

Exhibit A
Personal/Professional Services Contract

1.0 Statement of Work:

Contractor will assist in the producing and the implementing of one tabletop exercise, to be held by November 17, 2024.

- A. Contractor shall
- B. Design exercise to include a flood related hazardous materials.
- C. Coordinate with agency representatives through the planning process and design the exercise to meet the agencies' goals of this exercise
- D. Conduct Pre-Exercise planning meetings.
- E. Facilitate one table top exercise within the boundaries of Umatilla County, which may be face to face or virtual, depending on restrictions
- F. Facilitate a hot wash immediately following the exercises.
- G. Compile an after action report for each exercise to be presented to the LEPC within 30 days after the exercise
- H. Include all pertinent documentation through the planning implementation and conclusion process.
- I. Once the exercise is complete all documentation will be available to the county for future reference
- J. All services will be performed in compliance with all grant requirements.
- K. All exercises will be in compliance within Federal HSEEP (Homeland Security Exercise and Evaluation Program) guidance.

2.0 Compensation and reimbursement

A. The total cost for the services is \$8,000. The amount will be paid upon completion of each exercise and receipt of invoice for the exercise performed.

Exhibit B
Personal/Professional Service Contract
Insurance

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

1. All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

2. Required by County Not Required by County
General Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for indemnity provided under this contract, and shall provide that Umatilla County and its divisions, officers and employees are additional insured but only with respect to the Contractor's services to be provided under this Contract;

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

4. Required by County Not Required by County
Professional Liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this contract. Any deductible shall not exceed \$25,000 each claim, incident, or occurrence.

5. Notice of cancellation or change.
There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverages without 30 days written notice from the Contractor or its insurers to the County.

6. Certificates of insurance.
As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to County prior to its issuance of Notice to Proceed. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self insurance.

Exhibit C
Independent Contractor Certification Statement

Contractor certifies that he is an independent contractor by meeting the following standards:

1. Contractor is licensed under ORS Chapter 701 to provide labor or services for which such registration is required.
2. Contractor has filed federal and state income tax returns in the name of the business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. Contractor will furnish the tools or equipment necessary to do the contracted labor or services.
4. Contractor has the authority to hire and fire employees who perform the labor or services.
5. Contractor represents to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist.

_____ A. The labor or services are primarily carried out at a location separate from my residence, or carried out primarily in a specific portion of the residence, which portion is set aside as the location of the business.

_____ B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.

_____ C. You use a telephone listing and service separate from you personal residence listing service.

_____ D. You perform labor or services only pursuant to written contracts.

_____ E. You perform labor or services for two or more different persons within a period of one year.

_____ F. You assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bond, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Dean Marcum
Contractor Signature

7/1/2024
Date