

RESOLUTION NO. 12

A RESOLUTION TO ENTER INTO A PERSONAL SERVICES AGREEMENT WITH SUMMER LAKE LLC FOR DEVELOPMENT PLANNING SERVICES

THE TROUTDALE URBAN RENEWAL AGENCY FINDS AS FOLLOWS:

1. In March 2006 Troutdale voters approved the Troutdale Riverfront Renewal Plan creating an urban renewal district and establishing the desired concept for redevelopment of the City's former sewage treatment plant site along with other properties within the district.
2. Efforts since that time to attract a developer of the Riverfront Renewal site have been unsuccessful which raise concerns about whether the approved concept plan is a viable development plan for this site.
3. Given current market conditions, it would be beneficial to reevaluate the characteristics of the site and to assess the previously approved concept plan to determine what type of development is most likely to be attracted to this site.
4. The Troutdale Urban Renewal Agency desires to retain a consultant with development experience who can provide development planning services that improve the chances of a successful development of the Riverfront Renewal site.

NOW, THEREFORE, BE IT RESOLVED BY THE URBAN RENEWAL AGENCY OF THE CITY OF TROUTDALE:

Section 1. The Troutdale Urban Renewal Agency Chair is authorized to sign the attached Personal Services Agreement with Summer Lake LLC, substantially as attached herewith in Attachment A.

Section 2. This resolution shall take effect immediately.

YEAS:

NAYS:

ABSTAIN:



Jim Kight, Chair

Date June 17, 2009



Debbie Stickney, City Recorder

Adopted: June 16, 2009

PERSONAL SERVICES AGREEMENT

This Agreement is between the TROUTDALE URBAN RENEWAL AGENCY, a municipal corporation of the State of Oregon (AGENCY) and SUMMER LAKE LLC (the "Consultant") (collectively, the "Parties"). The Parties mutually covenant and agree as follows:

1. **Effective Date and Duration.**

This Agreement is effective on June 16, 2009, or on the date at which each party has signed this Agreement, Exhibit D and Exhibit E, whichever is later. The work under this Agreement shall be completed, unless otherwise terminated or extended, on or before April 16, 2010, or within ten months of the date at which each party has signed the Agreement, whichever is later.

2. **Scope of Work.**

The Agency is engaging the Consultant to provide pre-development planning services. The scope of work the Consultant shall provide, including the delivery schedule, is contained in Exhibit A. Consultant shall, at its own risk and expense, perform the scope of work and furnish all labor, equipment, materials and permits that are required to properly perform the work. The risk of loss for Consultant's services shall not shift to the Agency until the Agency provides written acceptance of the services.

3. **Consideration.**

a. Agency agrees to pay Consultant for actual labor and authorized expenses a sum not to exceed \$49,500 for performing the work required by this Agreement. The Parties further agree that if the Agency and the Consultant mutually agree to proceed with a phase two pre-development agreement upon completion of the work under this agreement, then the Agency will receive full credit for the amount paid to the Consultant under this agreement. The credit to the Agency will be applied to the pre-development agreement that is negotiated between the Agency and the Consultant or in other financial obligations to the Agency that the Consultant incurs if developing the site.

b. Any interim payments to Consultant shall be made only in accordance with the schedule and requirements in Exhibit A.

c. Agency certifies that sufficient funds have been appropriated to make payments required by this Agreement during the period covered by this Agreement.

4. **Standard Terms and Conditions**

a. Independent Contractor.

(i) Consultant shall perform the work required by this Agreement as an independent contractor. Although the Agency reserves the right (i) to specify the desired results; (ii) to

determine (and modify) the delivery schedule for the work to be performed; and (iii) to evaluate the quality of the completed performance, the Agency cannot and will not control the means or manner of the Consultant's performance. The Consultant is responsible for determining the appropriate means and manner of performing the work.

(ii) The Consultant represents and warrants that Consultant (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Certification Statement for Corporation or Independent Contractor attached as Exhibit D.

(iii) Consultant will be responsible for any federal or state taxes applicable to any compensation or payment paid to Consultant under this Agreement.

(iv) Consultant is not eligible for any federal Social Security, unemployment insurance, state Public Employees' Retirement System, or workers' compensation benefits from compensation or payments to Consultant under this Agreement.

- b. Subcontracts and Assignment. Consultant shall not subcontract any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement, without the prior written consent of the Agency. Consultant agrees that if subcontractors are employed in the performance of this Agreement, the Consultant and its subcontractors are subject to the requirements and sanction of ORS Chapter 656, Workers' Compensation.
- c. Third Party Beneficiaries. Agency and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- d. Successors in Interest. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and approved assigns, if any.
- e. Early Termination.
- (i) The Agency and the Consultant, by mutual written agreement, may terminate this Agreement at any time.
- (ii) The Agency, on 30 days written notice to the Consultant, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- (iii) Either the Agency or the Consultant 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 or submitted an acceptable plan to cure the breach within 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.
- f. Payment on Early Termination.

(i) If this Agreement is terminated under 4(e)(i) or (ii), the Agency shall pay the Consultant for work performed in accordance with the Agreement prior to the termination date.

(ii) If this Agreement is terminated under 4(e)(iii), by the Consultant due to a breach by the Agency, then the Agency shall pay the Consultant as provided in subsection (i) of this section.

(iii) If this Agreement is terminated under 4(e)(iii), by the Agency due to a breach by the Consultant, then the Agency shall pay the Consultant as provided in subsection (i) of this section, subject to set off of excess costs, as provided for in section 4(g), Remedies.

g. Remedies.

(i) In the event of termination under 4(e)(iii) by the Agency due to a breach by the Consultant, then the Agency may complete the work either itself, by agreement with another consultant, 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 Agreement, then the Consultant shall pay to the Agency the amount in excess of 125% of the remaining unpaid balance.

(ii) The remedies provided to the Agency under section 4(e) and (g) for a breach by the Consultant shall not be exclusive. The Agency also shall be entitled to any other equitable and legal remedies that are available.

(iii) In the event of breach of this Agreement by the Agency, then the Consultant's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 4(e)(iii) and 4(f)(ii).

h. Access to Records. Consultant shall maintain, and the Agency and its authorized representatives shall have access to all books, documents, papers and records of Consultant which relate to this Agreement 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.

i. Ownership of Work. All work products of the Consultant that result from this Agreement, including but not limited to background data, documentation and staff work that is preliminary to final reports, are the property of Agency. Draft documents and preliminary work submitted to the Agency for review and comment shall not be considered as owned, used or retained by the Agency until the final document is submitted. The Agency shall own all proprietary rights, including but not limited to copyrights, trade secrets, patents and all other intellectual or other property rights in and to such work products. Preexisting trade secrets of the Consultant shall be noted as such and shall not be considered as a work product of this Agreement. All such work products shall be considered "works made for hire" under the provisions of the United States Copyright Act and all other equivalent laws. Use of any work product of the Consultant by the Agency for any purpose other than the use intended by this Agreement is at the risk of the Agency. Use of any work product by Consultant is prohibited without the written consent of the Agency, which the Agency shall not unreasonably withhold.

j. Compliance with Applicable Laws. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including, without

limitation, ORS 279A.110, ORS 279B.220, 279B.225, 279B.230, 279B.235, 279C.515, 279C.520, and 279C.530, as set forth on Exhibit B. Without limiting the foregoing, Consultant expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, (iv) ORS 659.425, (v) all regulations and administrative rules established pursuant to those laws; and (vi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. A condition or clause required by law to be in this Agreement shall be considered included by these references.

k. Indemnity and Hold Harmless.

(i) Consultant and Agency shall defend, save, hold harmless, and indemnify each other, their officers, agents, and employees from all claims, suits, or actions of whatsoever nature, resulting from or arising out of the activities of Consultant or Agency or their officers, employees, subcontractors, or agents under this Agreement.

(ii) Consultant shall defend, save, hold harmless, and indemnify the Agency, its officers, agents, and employees from all claims, suits, or actions arising out of the professional negligent acts, errors, or omissions of Consultant or its officers, employees, subcontractors, or agents under this Agreement.

l. Insurance. Consultant shall provide insurance in accordance with Exhibit C.

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

n. Professional Standards. Work under this Agreement shall be performed in a good and workmanlike manner and in accordance with the professional standards of professionals doing similar work in the State of Oregon. At all times during the term of this Agreement, Consultant shall be qualified, professionally competent, and duly licensed to perform the services. In addition to any other remedies, Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

o. Governing Law. The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon and ordinances of the Agency of Troutdale, Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court in Multnomah County, Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.

p. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held invalid.

q. Merger Clause. THIS AGREEMENT AND EXHIBITS A, B, C, D AND E , WHICH ARE AN INTEGRAL PART OF THIS AGREEMENT, CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION

OR CHANGE OF TERMS OF THIS AGREEMENT 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. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. BY ITS SIGNATURE, CONSULTANT ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signed by Consultant this 19 day of JUNE, 2009:

William A. Dorsch MANAGING MEMBER
Signature/Title

NOTICE TO CONSULTANT: This Agreement does not bind the Agency unless and until the Agency Administrator or the Administrator's Designee has executed it.

Approved by Agency this 7 day of July, 2009:

Juan Kuyter
Agency Chair

Approved as to form:

[Signature]
Agency Attorney

EXHIBIT A

SCOPE OF WORK, DELIVERY SCHEDULE & PAYMENT SCHEDULE

Preamble to Scope of Work

This Agreement establishes an initial period of time during which the parties will undertake certain activities relating to predevelopment planning and exclusive negotiations relating to Troutdale's "Riverfront Renewal Site". For the purposes of this Agreement, the "property" is assumed to include all Agency, Yoshida and any railroad right of way property Agency owns, may purchase or control for the purposes of riverfront redevelopment.

This Agreement commits Agency to engage Consultant for the purpose of predevelopment planning and assessment of the Riverfront redevelopment property. The parties understand that Consultant intends to conduct extensive due diligence of the property over an eight to ten month period. The preliminary development plan that Consultant generates will be conceptual in nature. It will not be a detailed development program that shows specific uses at the block level, nor will it be a detailed financial pro forma that guides developers. The preliminary plan is intended to be a concept plan that Consultant and its affiliates intend to follow in order to move toward ground breaking and full development in a multi phase process.

The work performed under this Agreement will be known as "phase one" of an intended multi phase process. The central focus of this phase of the project will not involve detailed planning, engineering, architectural, financial analysis and market assessments of the site. Should the phase one work product outcomes provide the Agency and Consultant sufficient supporting evidence that proceeding to a phase two "pre-development agreement" between the parties would be beneficial to both parties, then the Agency and Consultant may choose to enter into such an agreement. Goals, objectives, work scope, schedule for deliverables, remedies and other aspects that pertain to a pre development agreement would be negotiated over a time period agreed to by both parties.

Scope of Work

The following scope of work is for predevelopment site planning and related due diligence performed by Consultant in order to determine how best to develop the Troutdale Riverfront property. This includes the Troutdale Urban Renewal Agency (Agency) property, the Yoshida property, and any other properties including railroad right of way, and the Troutdale outlet mall abutting the site.

1. Clarify and define what public officials need and want from the project. Is Agency committed to the "STP Visioning Plan" (Dec. 2003) as the driving force for any future development? How flexible is the Agency on what development can take place within the urban renewal site?

What steps, if any, will the /Agency need to go through to change the URA plan? Clarify major development themes with the Agency. Establish which uses are most desired for the site -- housing, retail, office, hotel, open space, etc. How much of each? Which are most viable and financially feasible?

Deliverable #1: A written two to five page summary to be known as the “Riverfront Project Update: Draft Development Goals and Guidelines”. This draft will address: Agency development expectations, minimum Agency required development components (open space, river access, general types of uses: commercial, retail, housing, etc. Consultant will provide a preliminary assessment of basic site development limitations. This document is intended to be the draft basic road map Consultant and Agency will use to move the planning and development process forward.

The “Riverfront Project Update” shall be prepared within forty- five (45) days of this agreement and submitted to Agency for comment, review and any necessary refinement. The draft can be finalized and incorporated into the final pre-development concept once other deliverables are processed.

2. Quantify all major on and off site infrastructure costs. This includes public and private roads, sewer, water, power and all major utilities, traffic improvements, environmental cleanup, site cleanup and restoration, ROW acquisition, etc. Evaluate road access issues with ODOT and Union Pacific ROW issues (access or purchase of some ROW).

Deliverable #2: Collect all available pertinent information from Agency, and prepare a preliminary itemized list of all major identified infrastructure costs. Estimates will be an order of magnitude that requires further refinement over time as a more detailed development program evolves and more money is spent on predevelopment assessment in later phases. Due within 90 days of Agreement start date.

3. Identify other potential public infrastructure funding. Examples are: Oregon “Main Street” funding, federal and state Brownfield funds via existing and new federal stimulus funds, and or other public sources to leverage new development.

Deliverable #3: Summarize findings and agree on action plan with Agency to pursue new funding sources that may be available to Agency within the next twelve months. Due 120 days from start of Agreement.

4. Evaluate Yoshida property: Agency’s current purchase option, Yoshida’s goals, Agency’s interest; and how to solidify a purchase, option or development agreement with Yoshida. Present alternatives to the Agency for action

Deliverable #4: Written summary of findings and potential alternatives due within 150 days of start date.

5. Evaluate outlet mall. Meet with Chelsea Property Group, in New Jersey if necessary, to establish whether Chelsea will consider “co developing” or redeveloping their site. If

negotiations between Chelsea and the Agency or the developer are deemed appropriate, outline a process for these negotiations.

Deliverable #5: Written summary of findings and alternatives available to Agency within 180 days of start date.

6. Prepare two redevelopment options based on results of discussions with Chelsea Properties. Option #1 is 18 acre riverfront site. Option #2 is 40 acre redevelopment that incorporates the Outlet Mall (the mall may be rehabbed and stay, or may vanish). Develop conceptual phasing plan for each.

Specifically, prepare a *Concept Plan* that shows general land uses (housing, retail, office, convention center/hotel, open space and mixed use by desired location) and illustrates a framework for roads, sidewalks and parking. This plan will allow for changes depending upon how the market develops. The concept plan will provide sample development types of housing, retail, etc. through architectural prototype concepts and/or photos of similar projects that could be utilized within the Riverfront site.

Deliverable #6: Present redevelopment concept plans to Agency within 240 days of start date.

7. Outline public/private financing options. Determine whether the Agency will carry the land (defer purchase until ground breaking) or will consider a land sale formula (minimum base price plus upside profit sharing). To what extent can Agency participate in project financing either directly or indirectly? What are the most effective uses of tax increment financing given the amount available? Will the Agency extend the life of the URA if needed to help make the development project financially viable? What kinds of private financing might be available to achieve the development concept? What other tools (e.g. tax credits, revenue bonds other than TIF and those supported by general fund dollars, etc.)?

Deliverable #7: Written summary of financing options to Agency within 270 days of Agreement date.

8. Prepare a preliminary on-site public infrastructure financing plan, and general project financial pro forma that uses various funding sources provided by the Consultant and is supported in concept by the Agency.

Deliverable #8: Preliminary public infrastructure financing plan and general project financial pro forma within 300 days of project start date.

9. If the Consultant so chooses and with the concurrence of the Agency, determine the public's expectation for the redevelopment site (ie. functional open space, jobs (income level?), expanded downtown, public amenities like a plaza, library, walking trails, etc.). The Agency, with advice from the Consultant, will determine what form of public outreach will be used, the appropriate timing for this task and what kinds of public follow up steps, if any, will be appropriate.

Project Reporting

In addition to those deliverables listed above, Consultant shall provide a written summary for each month of the pre-development work it undertakes. The report will provide a detailed summary of the significant and relevant pre-development issues relating to financing, engineering, design, environmental, geo technical, land ownership, etc. Consultant shall have monthly meetings with the appropriate Agency staff, if mutually agreed upon, on major issues concerning the ongoing pre-development work.

PAYMENT SCHEDULE

Within 15 calendar days of receiving each of deliverables #1 thru #6 and accepting each as complete, Agency will pay Consultant the sum of \$7,000 each. Within 15 calendar days of receiving deliverables #7 and #8, which are the final deliverables, Agency will pay Consultant the sum of \$7,500 for a total project payment of \$49,500.

EXHIBIT B

**COMPLIANCE WITH APPLICABLE LAW
for
PERSONAL SERVICES AGREEMENTS**

WHERE APPLICABLE, ALL CONTRACTORS SHALL COMPLY WITH THE FOLLOWING STATUTORILY REQUIRED PROVISIONS:

279A.110 Discrimination in subcontracting prohibited; remedies.

* * * * *

(4) A bidder or proposer shall certify . . . that the bidder or proposer has not discriminated and will not discriminate, in violation of subsection (1) of this section, against any minority, women or emerging small business enterprise in obtaining any required subcontract.

279B.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

(1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.

(2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.

(3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

279B.225 Condition concerning salvaging, recycling, composting or mulching yard waste material. Every public contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, composte or mulch yard waste material at an approved site, if feasible and cost-effective.

279B.230 Condition concerning payment for medical care and providing workers compensation.

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

279B.235 Condition concerning hours of labor.

(1) Every public contract, other than a contract for services at a county fair or for other events authorized by a county fair board, must contain a condition that the contractor shall pay employees for overtime work performed under the public contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

279C.515 Conditions concerning payment of claims by public officers, payment to persons

furnishing labor or materials and complaints. (1) Every public contract shall contain a clause or condition that, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as the claim becomes due, the proper officer or officers representing the state or a county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract.

* * * * *

(4) The payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

279C.520 Condition concerning hours of labor.

(1) Every public contract subject to this chapter must contain a condition that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

(a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

(2) An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

* * * * *

(5)(a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires the persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1) (b) (B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

279C.530 Condition concerning payment for medical care and providing workers' compensation.

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

EXHIBIT C

PERSONAL SERVICES AGREEMENT INSURANCE REQUIREMENTS

To: Insurance Agent. Please provide Certificates of Insurance to the Agency. During the term of the Agreement, please provide Certificates of Insurance prior to each renewal.

During the term of this Agreement, Consultant shall maintain in force at its own expense all insurance noted below:

(Required) Commercial General Liability insurance, on an occurrence basis, with a combined single limit of not less than \$1,000,000 for each occurrence of bodily injury, personal injury and property damage. It shall include coverage for broad form contractual liability; broad form property damage; personal and advertising injury; owners and contractor protective; premises/operations; and products/completed operations. Coverage shall not exclude excavation, collapse, underground, or explosion hazards.

(Required, unless Consultant and Agency initials on line below) Workers Compensation insurance in compliance with ORS 656.017. All employers, including Consultant, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage. Consultant shall ensure that each of its subcontractors complies with these requirements. Consultant is exempt in accordance with ORS 656.126 (temporary worker from another state) or ORS 656.027 (casual work, independent contractors that are sole proprietors, partnerships or corporations, etc.) Agency *RF* Consultant *WAT*

(Check Here if Required) { } 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 Agreement. The coverage must remain in effect for two years after the Agreement is completed.

(Check Here if Required){ } Commercial Automobile Liability insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired and non-owned vehicles. "Symbol One" coverage shall be designated.

Notice of Cancellation or Change. 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 Consultant or its insurer(s) to the Agency. This notice provision shall be by endorsement physically attached to the certificate of insurance.

Additional Insured. For general liability insurance and automobile liability insurance the Agency, and its agents, officers, and employees will be Additional Insureds by endorsement, but only with respect to Consultant's services to be provided under this Agreement. This coverage shall be by endorsement physically attached to the certificate of insurance.

Certificates of Insurance. Consultant shall furnish insurance certificates acceptable to Agency prior to commencing work. The certificate will include the deductible or retention level and required endorsements. Insuring companies or entities are subject to Agency approval. If requested, copies of insurance policies shall be provided to the Agency. Consultant shall be responsible for all deductibles, self-insured retention's, and/or self-insurance.

(Check four or more of the following:)

- A. The labor or services are primarily carried out at a location that is separate from Consultants residence or is primarily carried out in a specific portion of Consultants residence, which is set aside as the location of the business.
- B. Commercial advertising or business cards are purchased for the business, or Consultant has a trade association membership.
- C. Telephone listing is used for the business that is separate from the personal residence listing.
- D. Labor or services are performed only pursuant to written contracts.
- E. Labor or services are performed for two or more different persons within a period of one year.
- F. Consultant 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.

If any action is taken by a person or enforcement agency relating to Consultant's independent Consultant status in connection with this Agreement, Consultant shall defend, hold harmless and indemnify the Agency, its elected and appointed officials, employees, volunteers and agents from any such action, claim, judgment, fine, penalty, or order to pay. Consultant shall pay any additional costs incurred by the Agency in defending such action or incurred as a result of such action. This indemnification is in addition to any indemnification otherwise in this agreement.

William J. Donck
Consultant Signature

6/19/2009
Date

EXHIBIT E

CONSULTANT DATA, CERTIFICATION, AND SIGNATURE

Business Name (please print): SUMMER LAKE LLC
Contact Name: WILL DENNECKE 503-997-3811 Fax: 503-235-5642
Address: 510 S.W. FIFTH AV. # 400
Social Security #: 544-62-5463 PORTLAND, OR 97204
Federal Tax ID #: _____ State Tax ID #: _____

Citizenship: Nonresident alien ~~Yes~~ No
USA

Business Designation (check one): Individual Sole Proprietorship
 Partnership Corporation Government/Nonprofit

The above information must be provided prior to approving this Agreement. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Consultant to 31 percent backup withholding.

Signed by Consultant:

William A. Denneck 6/19/2009
Signature/Title Date