**Personal Service Consulting Contracts**

# The Board of Directors Role

It's the board of directors' duty to act in the best interests of the district and in accordance with applicable law. The extent of the contract for consulting services caries greatly depending on the level of protection required by the district. The level of protection is usually tied to the potential for liability to the district should the consultant's work product be poor or blatantly erroneous, combined with the type of services to be provided. The consulting contract all facilitates a smoother relationship with the consultant by specifying the terms and conditions under which the services are to be provided, thus avoiding misunderstanding and confusion by either party during the course of performance.

Q: Does the board have an adopted policy?

Q: What does Oregon Law require?

# Sample Personal Services Policy

Personal services shall be defined to include those services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: architects, engineers, surveyors, attorneys, accountants, auditors, computer programmers, artists, designers, performers, and consultants. The or his/her designee shall have the authority to determine whether a particular service is a "personal service" under this definition.

Personal service contracts do not require a competitive bidding process. When screening or selecting a personal service contractor, the District will consider qualifications, performance history, expertise, knowledge and creativity, and the ability to exercise sound judgment. The selection is based primarily on these factors rather than price.

Contracts with architects, engineers, and land surveyors. Unless otherwise provided in this Section, contracts for Architectural, Engineering and Surveying Services and Related Services shall be awarded according to ORS 279C.110(3). A contract for Architectural, Engineering, and Surveying Services may be entered into by direct appointment if such contract is estimated not to exceed in a calendar year, or if the project described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under these Rules, and the new contract is a continuation of that project.

**Checklist for Personal Service Contracts**

Common structure of Personal Services Contract

* Recitals
  + Establish parties
  + Establish legal authority of contract
  + Establish limitations on delegation
  + Observe all laws
  + Identify controlling law
* Performance of contract
  + Scope of services/schedule of deliverables
    - Additional Services Provisions

o Work product and deliverables

* + Subcontract identification
    - Authority for any assignment to subcontractors
  + Identify key personnel
  + Designation of contract representative
* Administration of contract

o Term of Contract

* Time of essence provision

o Method of payment

* + Termination of provisions
    - Partial vs. total
  + District records and confidentiality
  + Dispute resolution process
* Risk management and insurance provisions

o Status of consultant

* Independent contractor
  + Insurance requires for contractor
    - Workers’ Compensation
    - General Liability (Claims made to)
    - Auto Liability
    - Additional Insured
  + Subcontractor insurance requirements
  + Indemnification Provisions