

# NORTH LINCOLN FIRE & RESCUE DISTRICT NO. 1 ARCHITECTURAL SERVICES CONTRACT

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This Contract is by and between North Lincoln Fire District No. 1 ("District") and Group Mackenzie ("Consultant") for the performance of architectural services as detailed in the District's Request for Proposals for these services and Consultant's response proposal.

## RECITALS

District solicited proposals from architect and engineering firms to provide architectural services in a competitive proposal process.

Consultant submitted its proposal, having examined the Request for Proposals, and was chosen as the most highly qualified design team best suited to meet the District's needs.

District has awarded the Contract to Consultant.

## CONTRACT EXHIBITS

Exhibit A - Scope of Work (AIA Document B141-1997)

Exhibit B - Oregon Personal Services Public Contracting Code Requirements

Exhibit C - Request for Proposal

Exhibit D - Consultant's Proposal

## AGREEMENT

### 1. Term

The term of this Contract shall be from its execution to project completion on or before \_\_\_\_\_, \_\_\_\_\_.

### 2. Scope of Work

Consultant shall provide all services and deliver all materials as specified in the attached Exhibits A, C and D, which are hereby incorporated into the Contract by this reference. In the case of inconsistency, conflict or ambiguity in the contract documents, these contract provisions govern, then exhibit provisions govern in the following order: Exhibit C, D, then A. All services and materials shall be provided by Consultant in accordance with the Exhibits in a competent and professional manner.

Changes to the Contract shall be made only by a written Change Order. No change in the work or any extra work shall be performed prior to approval of the Change Order by District. The price included on any Change Order shall be inclusive of all estimated costs, both direct and indirect, relating to the change in work. Further, the Change Order shall provide a detailed basis for substantiating

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any monetary and/or work changes. If monetary changes are made, the Change Order shall contain a maximum not to exceed amount.

Upon District's request and without additional compensation, Consultant shall make such revisions to completed Contract Documents as are necessary to correct errors or omissions appearing therein, which deviated from the standard of care described Section 21.

If all construction bids come in over the District's budgeted amount for the construction project, or otherwise must all be rejected, Consultant shall either redraft project specifications to bring the project within budget or rebid the project, at the District's discretion. District may choose to negotiate compensation for Consultant's costs associated with redrafting project specifications, upon receipt of Consultant's written request to this effect, in District's sole discretion. Consultant shall be responsible for the costs of all licenses and permits necessary to perform the services under this Contract, and to arrange for and obtain all such licenses and permits from the appropriate office or agency.

For the purposes of this Contract, "Change Order" means a written order signed by the Consultant and District authorizing a change in the work and/or an adjustment in the price, deliverable due dates, substantial completion date, or final completion date.

### **3. Compensation**

Consultant shall complete its scope of work as defined in Exhibit A above on the fire station project for the total fee of \$150,000.00. Payments shall be based upon monthly invoices which Consultant shall submit to the District, detailing the previous months' fees, costs and percentage of the project completed at that time. Upon request, Consultant will provide the District representative with documents, records, and draft plans evidencing the progress made on the project to date. Consultant shall send invoices to District's representative at District's address set forth in Section 6.

### **4. Contractor Is an Independent Contractor**

Consultant shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under this Contract. While District reserves the right to set the schedule and evaluate the quality of the completed work, District can not and will not control the means and manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing work. Consultant is responsible for all federal and state taxes applicable to compensation and payment paid to Consultant under the Contract and will not have any amounts withheld by District

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to cover Consultant's tax obligations. Consultant is not eligible for any District fringe benefit plans.

## **5. Project Managers**

District's Project Manager is Don Baker, Fire Chief, for District. Consultant's Project Manger is Jeffrey Reaves. Consultant's key personnel and subconsultant assigned to the project are as outlined in Exhibit D. Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the Key Personnel. Consultant shall make available the Key Personnel. Any attempted substitution of any Key Personnel without written consent of District shall constitute a material breach of this Contract. In the event that any Key Personnel become unavailable to Consultant at any time, Consultant shall replace the Key Personnel with personnel or subconsultants having substantially equivalent or better qualifications than the Key Personnel being replaced, as approved by District, which approval shall not be unreasonably withheld. Consultant shall remove any individual or subconsultant from the project if so directed by District in writing following discussion with Consultant, provided that Consultant shall, with District's approval, have a reasonable time period within which to find a suitable replacement.

## **6. Notices**

All notices provided for hereunder shall be in writing and shall be deemed to be duly served on the date of delivery if delivered in person, when receipt of transmission is generated by the transmitting facsimile machine if delivered by facsimile transmission, on the day after deposit if delivered by overnight courier, or three days after deposit if delivered by placing in the U.S. mail, first-class, postage prepaid. Any notice delivered by facsimile transmission shall be followed by a hard copy. All notices shall be addressed as follows:

Don Baker, Fire Chief / Project Manager  
North Lincoln Fire & Rescue District No. 1  
P.O. Box 200  
Lincoln City, OR 97367  
Phone: (541) 996-2233  
Fax: (541) 996-5344

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## 7. Indemnification

Consultant shall indemnify, hold harmless, and defend District and its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits resulting directly or indirectly from Consultant's negligent performance and/or fault of Consultant, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of District and Consultant, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

Consultant shall defend District from claims covered under the indemnification section at Consultant's sole cost and expense until such time (1) as an arbitration panel or a court of competent jurisdiction determined that District is liable in whole or in part for the loss or claim caused by District's negligence or (2) until District and Consultant mutually agree to allocate the liability.

## 8. INSURANCE

- 8.1 During the term of this Contract, Consultant shall maintain, at its own expense, the following types insurance in the following amounts:
- a. Commercial General Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. Coverage shall include contractual liability coverage for the indemnity provided under this Contract.
  - b. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence.
  - c. The limits required in this Section 8.1 may be met with a combination of underlying and umbrella coverage.
  - d. Comprehensive Automobile Liability. Consultant shall maintain automobile liability insurance coverage of not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury or property damage for all of the insured's vehicles, agents and employees.
  - e. Professional Liability. Consultants shall maintain a professional liability insurance policy specifically insuring its performance with respect to the project, with coverage of not less than \$1,000,000 to protect the insured from claims for professional acts, errors, or omissions arising from the work.

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- 8.2 If any of the above required insurance is arranged on a "claims made" basis, "tail" coverage will be required at final completion or termination of this Contract for a duration of two (2) years.
- 8.3 Policies shall provide that District, its directors, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 8.1(a) and a waiver of subrogation against them shall be obtained for all coverages.
- 8.4 All coverages under Section 8.1 shall be primary over any insurance District may carry on its own.
- 8.5 Consultant shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under this Contract.
- 8.6 All policies of insurance shall be issued by good, responsible companies, with a rating reasonably acceptable to District and that are qualified to do business in the state of Oregon.
- 8.7 Consultant shall furnish District with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. If requested by District, Consultant shall furnish District with executed copies of such policies of insurance. A thirty (30) day notice of cancellation, termination or non-renewal in coverage clause shall be included in all insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

### **9. Workers' Compensation**

- 9.1 Consultant, its subcontractors, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.
- 9.2 Consultant warrants that all persons engaged in Contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Consultant shall indemnify District for any liability incurred by District as a result of Consultant's breach of the warranty under this paragraph.

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## **10. Hours of Employment**

Consultant shall comply with all applicable state and federal laws regarding employment.

## **11. Assignment**

Consultant may not assign any of its responsibilities under this Contract without District's prior written consent, which consent may be withheld in District's sole discretion. Consultant may not subcontract for performance of any of its responsibilities under this Contract without District's prior written consent, which consent shall not be unreasonably withheld. Consultant's assigning or subcontracting of any of its responsibilities under the Contract without District's consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, Consultant shall remain liable for all of its obligations under this Contract.

## **12. Labor and Material**

Consultant shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Contract work, all at no cost to District other than the compensation provided in this Contract.

## **13. Ownership of Work and Documents**

All work performed by Consultant and compensated by District pursuant to this Contract shall be the property of District upon full compensation for that work performed or document produced to Consultant, and it is agreed by the parties that such documents are works made for hire. Consultant hereby conveys, transfers and grants to District all rights of reproduction to all such documents. However, in the event District reuses or modifies any materials furnished to District by Consultant, without Consultant's involvement or consent, then Consultant shall not be responsible for the materials.

## **14. Termination for Convenience**

This Contract may be terminated by mutual consent of the parties upon written notice. In addition, District may terminate all or part of this Contract upon determining that termination is in the best interest of District by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Consultant. Upon termination under this paragraph, Consultant shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination

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less previous amounts paid and any claim(s) District has against Consultant. Pursuant to this paragraph, Consultant shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Consultant. District shall not be liable for any costs invoiced later than thirty (30) days after termination unless Consultant can show good cause beyond its control for the delay.

## **15. Termination for Cause**

District may terminate this Contract effective upon delivery of written notice to Consultant, or at such later date as may be established by District, under any of the following conditions:

- 15.1 If District funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.
- 15.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 15.3 If any license or certificate required by law or regulation to be held by CONSULTANT to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

## **16. Termination for Default**

Either District or Consultant may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving written notice of termination.

If Consultant fails to perform in the manner called for in this Contract or if Consultant fails to comply with any other provisions of the Contract, District may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Consultant setting forth the manner in which Consultant is in default. Consultant shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract.

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### **17. Remedies**

In the event of breach of this Contract, the parties shall have the following remedies:

- 17.1 If terminated under paragraph 15 by District due to a breach by Consultant, District may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Consultant shall pay to District the amount of the reasonable excess.
- 17.2 In addition to the above remedies for a breach by either party, the other shall be entitled to any other equitable and legal remedies that are available.
- 17.3 If District breaches this Contract, Consultant's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Consultant is entitled.
- 17.4 District shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.
- 17.5 Upon receiving a notice of termination, and except as otherwise directed in writing by District, Consultant shall immediately cease all activities related to the services and work under this Contract. As directed by District, Consultant shall, upon termination, deliver to District all then existing work product that, if the Contract had been completed, would be required to be delivered to District.

### **18. Nondiscrimination**

During the term of this Contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

### **19. Governing Law; Jurisdiction; Venue**

This Contract shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between District and Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Lane County for the state of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be



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brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONSULTANT BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **20. Compliance with Laws and Regulations**

Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with: (i) ORS 659.425; (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) District's performance under this Contract is conditioned upon Consultant's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit B and incorporated herein by this reference. Consultant, its subconsultants and all employers providing work, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Consultant shall adhere to all safety standards and regulations established by District for work performed on its premises or under its auspices.

## **21. Experience, Capabilities and Resources**

By execution of this Contract, Consultant agrees that:

Consultant is an experienced engineering firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract to design or administer a project having the scope and complexity of the project.

Consultant has the capabilities and resources necessary to perform the obligations of this Contract. Consultant is familiar with all current laws, rules, and regulations which are applicable to the design and construction of the project, and that all drawings, specifications, and other documents prepared by Consultant shall be prepared in accordance with the standard of care of other professionals performing similar services under similar conditions and in an effort to accurately reflect and incorporate all such laws, rules, and regulations.

## **22. Drawings, Specifications and Other Documents**

Consultant hereby agrees that it will, in a manner consistent with its standard of care defined in above in Section 21, prepare all drawings, specifications, and other documents pursuant to this Contract so that they are complete and that the project, if constructed in accordance with the intent established by such

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drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility.

## **23. Errors and Omissions**

Consultant shall be responsible for correcting any errors or omissions in the drawings, specifications, and/or other documents which deviate from the standard of care set forth in Section 21. Consultant shall correct at no additional cost to District any and all such errors and omissions in the drawings, specifications, and other documents prepared by Consultant or its subconsultants. Consultant further agrees to assist District in resolving problems relating to the project design or specified materials.

## **24. Contract Performance**

Consultant shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. All construction documents shall be completed sufficient for turn in for permit review no later than August 1, 2008 (hereinafter the "Critical Dates").

Consultant shall not be liable for delays that are beyond Consultant's control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any breach of Consultant's warranties or a default or defect in performance by Consultant that has not been cured. Consultant agrees that time is of the essence under this Contract.

## **25. Access to Records**

For not less than three (3) years after the Contract expiration and for the purpose of making audit, examination, excerpts, and transcripts, District, and its duly authorized representatives shall have access to Consultant's books, documents, papers, and records that are pertinent to this Contract. If for any reason, any part of this Contract, or any resulting construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Consultant shall provide full access to these records to District, and its duly authorized representatives in preparation for and during litigation.

## **26. Representations and Warranties**

Consultant represents and warrants to District that (1) Consultant has the power and authority to enter into and perform this Contract, (2) when executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (3) Consultant shall, at all times during the term of this Contract, be duly licensed to perform the services, and if there is

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no licensing requirement for the profession or services, be duly qualified and competent, (4) the services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

### **27. District Obligations**

- 27.1 District shall provide full information in a timely manner regarding requirements for and limitations on the project. With regard to subcontractor liens, District shall furnish to Consultant, within fifteen (15) days after receipt of a written request, information necessary and relevant for Consultant to evaluate, give notice of, or enforce lien.
- 27.2 District shall establish and update, if necessary, an overall project budget, including engineering and construction costs.
- 27.3 District shall furnish the services of consultants, including geotechnical engineers, when such services are requested by Consultant, reasonably required by the scope of the project, and agreed to by District.
- 27.4 District shall furnish all testing as required by law or the contract documents.
- 27.5 District shall furnish all legal accounting, auditing and insurance services as necessary for the project to meet the District's needs and interests, after Consultant has performed requisite project management and oversight duties.
- 27.6 District shall provide prompt written notice to Consultant if District becomes aware of any fault or defect in the project, including any errors, omissions or inconsistencies in Consultant's design or performance under the contract.
- 27.7 District shall pay to Consultant in monthly installments made upon Consultant's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect the progress made upon the project to date, on a pro rata basis.
- 27.8 District shall report the total amount of all payments to Consultant, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.

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27.9 District shall guarantee access to, and make all provisions for Consultant to enter upon public and private property necessary for performance of the Scope of Work over which District exercises control.

### **28. Successors and Assigns; Subcontractors and Assignments**

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

### **29. Limitation of Liabilities**

District not shall be liable for (i) any indirect, incidental, consequential or special damages under the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

### **30. Foreign Contractor**

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

### **31. Confidentiality**

Consultant shall maintain the confidentiality of any of District's information that has been so marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Consultant from establishing a claim or defense in an adjudicatory proceeding. Consultant shall require of Consultant's subconsultants similar agreements to maintain the confidentiality of information of District.

### **32. Force Majeure**

Consultant shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

### **33. Waivers**

No waiver by District of any provision of this Contract shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Consultant

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of the same or any other provision. District's consent to or approval of any act by Consultant requiring District's consent or approval shall not be deemed to render unnecessary the obtaining of District's consent to or approval of any subsequent act by Consultant, whether or not similar to the act so consented to or approved.

**34. Severability**

Any provision of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

**35. Headings**

The captions contained in this Contract are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

**36. Integration and Modification**

This Contract, including Contract documents referenced in paragraph 1, contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements. Any changes to this will be implemented via written change order signed by authorized parties for each party to this Contract.

**37. Authority**

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to make this Contract.

**38. Certificate of Compliance with Oregon Tax Laws**

By executing this Contract, Consultant certifies under penalty of perjury that Consultant is, to the best of Consultant's knowledge, not in violation of any Oregon tax laws described in ORS 305.385(6)(7).

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**NORTH LINCOLN FIRE & RESCUE  
DISTRICT #1**

**GROUP MACKENZIE**

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Donald M. Baker, Fire Chief

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Jeffrey P. Reaves

Date: \_\_\_\_\_

Date: \_\_\_\_\_