

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

In the matter of Approving an)
Intergovernmental Agreement and)
Contract for the Regional Arts)
and Culture Council)

RESOLUTION
95-25

WHEREAS, the City of Portland, Oregon and Multnomah County created by Intergovernmental Agreement, dated July 1, 1973, as amended, a City/County commission known as the Metropolitan Arts commission (MAC). The purpose of MAC is to promote and encourage programs to further the development and public awareness of and interest in the visual and performing arts.

WHEREAS, MAC has distinguished itself with a record of high quality re-grant, technical assistance and public art programs and has attained national recognition for its leadership in linking the arts to other important community priorities and planning processes. In 1989, as an extension of its leadership, MAC became an advocate of a region-wide planning process that addressed the opportunities of arts and cultural growth and the chronic problems associated with providing broad and affordable public access to first-hand arts and cultural experiences.

WHEREAS, the City and County in 1993 amended the City/County Intergovernmental Agreement to include serving Clackamas, Washington and Clark Counties in the implementation of Arts Plan 2000+. The Plan directed MAC to strengthen the organization, planning and development of the region-wide arts industry toward broad regional goals of access, inclusion, education, economic development and quality of life and to enter into contracts for grants and services in those jurisdictions.

WHEREAS, Multnomah County was an active participant in the Metropolitan Regional Arts Funding Task Force, a task force with representation from all regional counties, which recommended short and long term solutions to arts programs and facilities needs, including the establishment of a nonprofit organization.

WHEREAS, MAC has restructured into a nonprofit organization, the Regional Arts and Culture Council (RACC), in order to implement the Arts Plan 2000+ and Metro Regional Arts Funding Task Force Recommendations to provide more cost effective, efficient and flexible services.

WHEREAS, the purpose of local government investment in the arts, including Multnomah County funding, is to promote access, inclusion, and excellence in the arts, and to enhance the contribution of the arts to economic vitality, educational opportunities, neighborhood and community revitalization, social harmony, regional growth management and overall quality of life.

NOW, THEREFORE BE IT RESOLVED:

A. The chair is authorized to enter into: (1) an Intergovernmental Agreement with the City of Portland, Metro, and Washington, Clackamas and Clark Counties which designates the RACC as the arts and culture council for the region. [Exhibit A to this Resolution.]; and (2) a Contract between Multnomah County and the RACC, conferring on RACC the roles and responsibilities previously assumed by the Metropolitan Arts Commission (Exhibit B to this resolution.)

B. The 1973 City/County Intergovernmental Agreement, as amended, which established the Metropolitan Arts Commission shall be terminated upon the effective date of this resolution; the thirty (30) day termination requirement in the prior Intergovernmental Agreement be waived.

Approved this 26th day of January, 1995.



MULTNOMAH COUNTY, OREGON

By Beverly Stein
Beverly Stein
Multnomah County Chair

REVIEWED:

Laurence Kressel, County Counsel
for Multnomah County, Oregon

BY John D. Kressel

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"Exhibit A"

CONTRACT FOR SERVICES
MULTNOMAH COUNTY

CAPTION

Multnomah County (County)
Regional Arts and Culture Council (Contractor)

RECITALS

1. Multnomah County decided in 1973 that a vital arts sector was a worthwhile investment and co-founded the Metropolitan Arts Commission (MAC) by Intergovernmental Agreement with the City of Portland to support the development of the arts and increase their availability to the public;

2. The Public Art Program was established in 1980. Ordinances are in place that provide for MAC management and collection of funds for the Percent for Public Art Programs for Multnomah County, the City of Portland, and Metro. MAC is responsible for selection, acquisition, siting, maintenance, administration, deaccessioning, community education, and registration of Public Art of the City/County Public Art Collection.

3. Multnomah County was a primary sponsor, funder and participant in the citizen driven Arts Plan 2000+ and accepted its findings in February, 1992;

4. Multnomah County and the City of Portland recognized the increasingly regional scope of MAC's duties and amended the Intergovernmental Agreement in 1993 to include Clackamas, Washington, and Clark Counties allowing for regional representation and service delivery;

5. Multnomah County was an active participant in the Metro Regional Arts Funding Task Force, which recommended short and long term solutions to arts programs and facilities needs including the transition of MAC to a regional, nonprofit organization;

6. MAC has restructured into a non profit organization in order to implement the Arts Plan 2000+ and Metro Regional Arts Funding Task Force recommendations to provide more cost effective, efficient and flexible services;

7. It is well established and confirmed that local governments have an appropriate role in encouraging the arts, using modest investments to leverage other resources. This transition is not intended to diminish that role;

January 19, 1995

8. The purpose of local government investment in the arts, including Multnomah County funding, is to promote access, inclusion and excellence in the arts, to leverage other resources for the arts, and to enhance the arts' contribution to human services, economic vitality, educational opportunities, neighborhood and community revitalization, economic vitality and overall quality of life;

9. Multnomah County along with City of Portland, Metro, Washington, Clackamas, and Clark Counties have entered into an Intergovernmental Agreement designating RACC as the regional arts and cultural agency and agreed to enter into service agreements with RACC to provide leadership, strategic planning, policy making, financial support and coordination for the regional arts and cultural industry.

AGREEMENT

1. SCOPE OF CONTRACTOR SERVICES:

(a) The Contractor shall provide services specifically to Multnomah County. The Contractor shall provide the County those services set out below:

A. General Services:

The Contractor shall provide the following general services:

1. Oversee and review all public art matters for Multnomah County.
2. Continue operation of the Public Art Program.
3. Provide support to cultural development through grants to artists and arts and culture organizations, public art commissions and technical assistance.
4. Seek to make the arts and culture a part of every child's education by fostering partnerships with schools and providing residencies, teacher training and grants to arts education providers.
5. Coordinate and focus cultural development through policy-making, initiation of new partnerships and exercise of leadership.
6. Advise Multnomah County, City of Portland, Metro, Multnomah, Washington, Clackamas, and Clark County in connection with artistic and cultural development;

7. Implement Arts Plan 2000+;

8. Advocate for the arts and culture at the local, regional, state, and national level by representing the arts in public forums, providing information to the media, general public and key decision makers, helping to define a role for the arts and culture in the community and developing new resources.

9. Plan for development and wise stewardship of our cultural resources within the cultural sector and seek to incorporate an arts and cultural agenda into regional human service, economic development, education, and growth management strategies.

10. Involve citizens in its decision making at all levels, evaluating its services and reporting on their outcomes.

11. Promote and encourage public programs to further the development and public awareness of, and participation in, the visual, literary, and performing arts;

B. Specific Services:

In providing the general services described above, the Contractor shall provide not less than the following services:

1. Continue operation of the Public Art Program:

a) Percent for Art Guidelines, as revised, shall continue to be used as the process for selecting, purchasing, commission, placing, and maintaining the art purchased through the Percent for Art Program;

b) Continue to advise other governments and private developers on development of public art programs;

c) Continue to develop public art education programs for schools, tourism groups and the general public;

2. Provide support to cultural development through grants to artists and arts organizations, public art commissions and technical assistance.

a) Continue operation of the Re-grants program which supports the visual, literary and performing arts

through direct grants to arts organizations and artists, according to County adopted guidelines;

b) Continue operation of the Community Services Program, which comprises the coordination, planning, partnership development and advocacy work of the RACC, including administrative functions, Arts Plan tracking and implementation and development of new and alternative resources for the arts. The program includes technical assistance to arts groups and artists to improve their effectiveness and outreach to under served communities and artists.

3. Develop and implement a youth arts program in cooperation with the Multnomah County Juvenile Justice Division and other community based youth service providers to create public art projects that can engage youth in positive behaviors and divert them from the justice system.

4. Develop and implement a Neighborhood Arts Program working with the Multnomah County Community and Family Services Division, Commission on Children and Families and neighborhood based organizations. RACC will work with neighborhoods to identify ways that cultural programs can contribute to livability and address neighborhood problems.

5. Develop and market a cultural tourism program collaborating with tourism marketing agencies, Metropolitan Exposition-Recreation Commission (MERC), arts organizations, the Business Committee for the Arts, Association for Portland Progress (APP), Tri-Met and other agencies to develop and market cultural tourism package tours and to improve the thoroughness and distribution of events calendars and arts resource guides.

6. Seek to make the arts and culture a part of every child's education by fostering partnerships with schools and providing residencies, teacher training and grants to arts education providers.

a) Operate the Artists in Education program which includes artist residencies in schools, pre-schools, special education sites and social service settings designed to integrate with curriculum according to RACC guidelines;

7. Support development of and access to the arts.

a) Conduct studies, hearings, and investigations to determine the needs of the county and region in the arts

and to provide leadership to activities of agencies and organizations having responsibility for services to and presentations of the arts;

b) Prepare, publish and disseminate educational and other materials dealing with the arts;

8. Advocate for the arts and culture at the local, regional, state, and national level by representing the arts in public forums, providing information to the media, general public and key decision makers, helping to define a role for the arts in the community and developing new resources.

a) Work with local, regional, state and federal governmental agencies and with public and/or private groups and foundations to secure contributions and grants to finance programs for the arts and to develop collaborative projects beneficial to multiple services such as enhancing travel and lodging industry through cultural tourism, to gather and consolidate information relation to the arts, and report to Multnomah County and the region periodically on its findings;

b) Recommend changes in legislation in local laws and policies needed to promote the aesthetic and cultural development of the region;

9. Implement Arts Plan 2000+;

Serve Multnomah County, City of Portland, Metro, Clackamas, Washington, and Clark Counties in the implementation of Arts Plan 2000+ to strengthen the organization, planning and development of the region-wide arts industry toward broad regional goals of access, education, economic development, regional growth management, and quality of life, and to enter into contracts for grants and services in those jurisdictions.

(b) The Contractor shall provide the services set out in subsection (a) above in accordance with the schedule set out below:

RACC will develop and report on annual action plans and key results consistent with the Scope of Contractor Services (Section 1, A and B) and submit them for Multnomah County review on an annual schedule set forth by the Project Manager. From the effective date of this agreement to June 30, 1995,

the annual goals shall be MAC Management Objectives contained within the adopted 1994/95 Metropolitan Arts Commission budget.

2. SCOPE OF COUNTY SERVICES

(a) To assist the Contractor in carrying out its obligations hereunder, the County shall perform the services set out below:

1. The County shall be responsible for the ongoing custody and control of Multnomah County Public Art as listed in the current inventory report and shall be responsible for storage, structural integrity and insurance. It is agreed that as of the effective date of this agreement, the "current inventory" is the report attached as Exhibit A to this contract. The inventory report shall be updated as appropriate by the Contractor.

2. The County shall submit a copy of its proposed and adopted CIP Budget to the Contractor according to Chapter 11.90 of the County Code to be used in the Percent for Art program for planning, funding and administering projects.

3. The County shall appoint a Multnomah County Commissioner as an ongoing liaison with Contractor.

4. The County Chair shall appoint members to RACC board in accordance with RACC bylaws.

5. The County shall include the Executive Director of Contractor or a designate in county goal setting, annual retreats, and appropriate task forces.

(b) The County shall perform the services set out in subsection (a) above in accordance with the schedule set out below:

1. Ongoing responsibilities shall begin as of the effective date of this contract;

2. County Commission liaison shall be appointed as of the effective date of this contract;

3. CIP budgets shall be submitted to the as required by County Code, Chapter 11.90 Percent for Arts; and

4. Board of director appointments shall be at the request of the Contractor's project manager.

3. COMPENSATION

1. Year one transfer of funds:

In year one of this contract, the 1994-95 budget appropriation for MAC is \$ 375,071, including the \$100,000 transient lodging tax transfer. The Contractor is owed two remaining quarterly payments for the transient lodging tax transfer which total \$50,000. The City of Portland has received the remaining \$ 325,071 and is responsible for transferring that amount to the Contractor.

2. Percent for the Arts

In accordance with Multnomah County Code Chapter 11.90 as revised, the 1.33% for art shall be transferred to the Contractor from appropriate County capital project budgets. At the discretion of the County Chair, the transfer shall occur: (1) when the capital project budgets are appropriated by the Board of County Commissioners; or (2) before construction bids are awarded for a particular project. The art funds shall be transferred when the project architect is hired, if at the same time, the artist is hired.

3. General Fund Allocation

Multnomah County will annually determine a general fund allocation to RACC. The County's general fund allocation shall be transferred to the Contractor in four, equal quarterly payments by the 15th day of each quarter, based upon the appropriated budget.

4. Transient lodging tax transfer

Subject to MCC Ordinance #790 as revised, transient lodging taxes in an amount not to exceed \$100,000 per year shall be transferred to the Contractor in 1994-95, 1995/96 and 1996/97. As stated in the ordinance, "Hotel Tax revenues transferred to the Metropolitan Arts Commission will not replace Multnomah County general fund support, but will augment and stabilize funding over the three year period." The County will make four, equal quarterly payments to the Contractor each year for the transient lodging tax transfer.

5. Additional special appropriations

The County may consider additional special appropriations as opportunities may from time to time arise.

4. EFFECTIVE AND TERMINATION DATES

This contract shall be effective upon approval by the Contractor and the County and shall terminate on June 30, 1997.

5. EARLY TERMINATION OF AGREEMENT

(a) The County and the Contractor, by mutual written agreement, may terminate this Agreement at any time.

(b) The County, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

6. PAYMENT ON EARLY TERMINATION

(a) In the event of termination under subsection 6(a) or 6(b), EARLY TERMINATION OF AGREEMENT, hereof, the County shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date. Contractor shall return all unexpended funds to County within 30 (thirty) days of notice of termination.

(b) In the event of early termination all of the Contractor's work product will become and remain property of the County.

7. REMEDIES

(a) The remedies provided to the Parties under section 6, EARLY TERMINATION OF AGREEMENT shall not be exclusive. The Parties also shall be entitled to any other equitable and legal remedies that are available.

8. COUNTY PROJECT MANAGER

(a) The County Project Manager shall be the County Commissioner designated as liaison.

(b) The Project Manager is authorized to approve work and billings hereunder, to give notices referred to herein, and to carry out any other County actions referred to herein.

9. COMPLIANCE WITH LAWS

(a) In connection with its activities under this Agreement, the Contractor shall comply with all applicable federal, state and local laws and regulations.

(b) In the event the Contractor provides goods or services to the County in the aggregate in excess of \$2,500.00 per fiscal year, the Contractor agrees it has certified with the County's Equal Employment Opportunity certification process.

10. OREGON LAW AND FORUM

(a) This Agreement shall be construed according to the laws of the State of Oregon.

(b) Any litigation between the County and the Contractor arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

11. INDEMNIFICATION

The Contractor shall hold harmless, defend and indemnify for public liability and property damage the County, and the County's officers, agents and employees against all claims, demands, actions and suits (including all attorney's fees and costs) brought against any of them arising from the Contractor's work or any subcontractor's work under this Agreement.

12. WORKERS' COMPENSATION INSURANCE

(a) The Contractor, its subcontractors, if any, and all employers working under this Agreement 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 their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement as Exhibit B, if applicable, and shall be incorporated herein and made a term and part of this Agreement. The Contractor further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.

(b) In the event the Contractor's workers' compensation insurance coverage is due to expire during the term of this Agreement, the Contractor agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and the Contractor agrees to provide Multnomah County such further certification of workers' compensation insurance as renewals of said insurance occur.

(c) The Contractor agrees to accurately complete Multnomah County's Questionnaire for Workers' Compensation Insurance and for Qualification as an Independent Contractor prior to commencing work under this Agreement. The Questionnaire is attached to this Agreement as Exhibit B and shall remain attached to this Agreement and become a part thereof as if fully copied herein. Any misrepresentation of

information on the Questionnaire by the Contractor shall constitute a breach of this Agreement. In the event of breach pursuant to this subsection, the County may terminate the Agreement immediately and the notice requirement contained in subsection 6(c), EARLY TERMINATION OF AGREEMENT, hereof, shall not apply.

13. SUBCONTRACTING

The Contractor shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the County. The Contractor shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Contractor as specified in this Agreement. Notwithstanding County approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the County shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

14. ASSIGNMENT

The Contractor shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the County.

15. INDEPENDENT CONTRACTOR STATUS

(a) The Contractor is engaged as an independent contractor and will be responsible for any federal, state and local taxes and fees applicable to payments hereunder.

(b) The Contractor, its subcontractors and their employees are not employees of the County and are not eligible for any benefits through the County including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

16. NOTICE

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the County: Office of the Chair
1120 SW Fifth Ave, Room 1515

Portland, Oregon 97204

If to the Contractor: Bill Bulick, Executive Director
309 SW 6th Ave, Suite 100
Portland, Oregon 97204

17. SEVERABILITY

If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.

18. INTEGRATION

This Agreement in combination with the Intergovernmental Agreement establishing contractor as the Regional Arts and Culture Council and the Transition Agreement between the City of Portland and Contractor contains the entire agreement between Multnomah County, City of Portland and the Contractor and supersedes all prior written or oral discussions or agreements.

19. FUNDS

The County certifies that sufficient funds are available and authorized for expenditure to finance the cost of this Agreement.

20. BUSINESS LICENSE

The Contractor shall obtain applicable business license, if any, that may be required for a Section 501(c)(3) tax exempt corporation.

21. COMMENCEMENT OF WORK

The Contractor agrees that work being done pursuant to this Agreement will not be commenced until after:

- (a) workers' compensation insurance is obtained, as outlined in section 13, WORKERS' COMPENSATION INSURANCE; and,
- (b) this Agreement is fully executed by the parties and approved by the County Attorney's Office; and,
- (c) the effective date of this Agreement as specified in section 5, EFFECTIVE AND TERMINATION DATES.

22. MAINTENANCE OF RECORDS

The Contractor shall maintain records on a current basis to support its billings to the County and to document the performance of services in accordance with this agreement. The County or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the Contractor regarding its billings and performance of services. The Contractor shall retain these records for inspection, audit and copying for three (3) years from the date of completion or termination of this Agreement.

23. AUDITS

(a) The County, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement and during the three (3) year period established by section 23, MAINTENANCE OF RECORDS. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

(b) If an audit discloses that payments to the Contractor under section 3, COMPENSATION, and section 4, BILLING AND PAYMENT PROCEDURE, were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the County.

(c) If any audit shows performance of services under section 1, SCOPE OF CONTRACTOR SERVICES, is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the County may pursue remedies provided under section 6, EARLY TERMINATION OF AGREEMENT, and section 8, REMEDIES.

24. LIABILITY INSURANCE

(a) The Contractor shall maintain public liability and property damage insurance that protects the Contractor and the County and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the Contractor's work under this Agreement. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damage; or a single limit policy of not less than \$500,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability

imposed on municipalities of the State of Oregon during the term of the Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the County and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be cancelled without thirty (30) days written notice first being given to the County Auditor. If the insurance is cancelled or terminated prior to completion of the Agreement, the Contractor shall provide a new policy with the same terms.

The Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor.

(b) The Contractor shall maintain on file with the County Auditor a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to the approval of the County Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the County.

25. AMENDMENTS

(a) The County and the Contractor may amend this Agreement at any time only by written amendment executed by the County and the Contractor. Unless otherwise provided, any amendment that increases the amount of compensation payable to the Contractor must be approved by ordinance of Multnomah County. The Project Manager may agree to and execute any other amendment on behalf of the County.

(b) Any change in the Scope of Contractor Services shall be deemed an amendment subject to subsection (a).

26. PROGRESS REPORTS

The Contractor shall provide progress reports in a format and on a schedule established by the Project Manager. The intent of the County is to involve the contractor in the establishment of reporting procedures and to generally minimize unnecessary paperwork. The schedule for programmatic and financial reports need not always be concurrent. The annual financial statement of the RAAC shall be submitted to the Project Manager as soon as it is available.

27. NON-WAIVER

The County and the Contractor shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

28. PROHIBITED INTEREST

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

(b) No County officer or employee who participated in the award of this Agreement shall be employed by the Contractor, except for those employees transferred from county employment to contractor appointment, during the period of the Agreement.

29. PAYMENTS TO VENDORS AND SUBCONTRACTORS

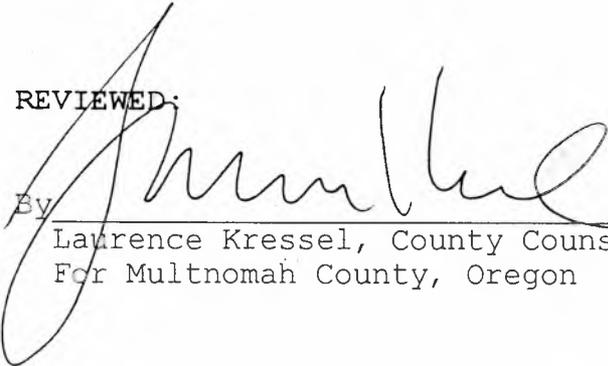
The Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the County or any materials that the Contractor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

CONTRACTOR: _____
By: _____
Title: _____
Date: _____
Business License No. _____
Tax ID No. _____
Social Security No. _____

MULTNOMAH COUNTY, OREGON

By: _____
Title: _____
Date: _____

REVIEWED:

By:  _____
Laurence Kressel, County Counsel
For Multnomah County, Oregon

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