

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL
SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Appointing Darren Harr, of
Terracalc Land Surveying, Inc., as Interim
County Surveyor and Approving a Contract
for Surveying Services

BOARD ORDER 24-153

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on June 6, 2024, Commissioners Lindsay Berschauer, Kit Johnston, and Mary Starrett being present.

IT APPEARING TO THE BOARD as follows:

WHEREAS, ORS 204.005(2) requires the Board to appoint a County Surveyor; and

WHEREAS, Jason Foose, former Yamhill County Surveyor, has resigned from the position, effective March 24, 2024; and

WHEREAS, The County now wishes to appoint an interim County Surveyor until such time as Mr. Foose's replacement can be hired; and

WHEREAS, Darren Harr of Terracalc Land Surveying, Inc., is willing and meets the requirements of ORS 204.016 and ORS 209.115 to be appointed as interim County Surveyor for Yamhill County; and

WHEREAS, A contract is required to engage the services of Mr. Harr, as provided in the attached Exhibit A; and now, therefore

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. Effective immediately, Darren Harr, Oregon Professional Land Surveyor Certificate No. 56181PLS, is hereby appointed to act in the interim capacity of County Surveyor for Yamhill County. This appointment shall expire on December 31, 2024.

Section 2. The contract attached hereto as Exhibit A is hereby approved.

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DATED this 6th day of June, 2024, at McMinnville, Oregon.

ATTEST

KERI HINTON
County Clerk

By: *Carolina Rook*
Deputy CAROLINA ROOK

FORM APPROVED BY:

Jodi Gollehon
JODI GOLLEHON
Assistant Yamhill County Counsel



YAMHILL COUNTY BOARD OF
COMMISSIONERS

Lindsay Berschauer
Chair LINDSAY BERSCHAUER

Kit Johnston
Commissioner KIT JOHNSTON

Mary Starrett
Commissioner MARY STARRETT

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between YAMHILL COUNTY, a political subdivision of the State of Oregon, acting by and through its Planning Department, hereinafter referred to as the "County", and DARREN HARR of TERRACALC LAND SURVEYING, INC., an Oregon corporation whose Federal Employer Identification No. is 80-0773012, hereinafter referred to as the "Surveyor".

RECITALS

WHEREAS, The County requires the services of an individual with the particular training, abilities, knowledge, qualifications, and experience to provide interim County Surveyor services; and

WHEREAS, The Surveyor possesses such training, abilities, knowledge, qualifications, and experience and is willing to perform the surveying services for the County as set forth herein; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by the parties as follows:

AGREEMENT

1. **TERM.** This Contract shall become effective, and services required hereunder shall commence, on the date the Contract is executed by both parties, or on May 29, 2024, whichever is sooner, and shall terminate on December 31, 2024, unless otherwise terminated or extended as provided herein. Upon mutual agreement of the parties, the Contract term may be renewed and extended in accordance with Section 8.
2. **CONSIDERATION.**
 - a. **Not-to-Exceed.** As consideration for the performance of all terms and conditions set forth in this Contract, the County shall pay the Surveyor a sum not to exceed \$50,000.00. Payment for all services performed hereunder, including reimbursable expenses as provided below, shall not exceed this amount.
 - i. **Invoicing.** On or before the 15th of each month, the Surveyor shall submit an invoice for work performed by the Surveyor during the preceding month. The invoice shall set out all items for payment including, but not limited to: the name of the individual, direct labor hourly rate, hours worked during the period, and tasks performed. The Surveyor shall also attach photocopies of claimed reimbursable expenses, if any. Where applicable, the Surveyor shall stamp and approve all subcontractor invoices. The County shall pay the Surveyor within 30 days following the date the invoice is received. The County shall make payments only after the County's receipt and approval of (i) the Surveyor's detailed monthly invoice, and (ii) all documentation required by the invoice. All Invoices shall be sent to (electronic invoicing permitted):

Yamhill County Planning
c/o Alicia Lisle, Office Manager

400 NE Baker Street
 McMinnville, OR 97128
lislea@yamhillcounty.gov

b. Hourly Rates & Reimbursable Expenses.

- i. The hourly rates for all services executed hereunder shall not exceed the following:

<u>NAME</u>	<u>ROLE</u>	<u>HOURLY RATE</u>
Darren Harr	Interim County Surveyor	\$150.00

- ii. The following expenses shall be reimbursed without mark-up:

- None

- c. Exclusive Payment. The compensation provided herein shall be exclusive, and the County shall neither pay nor provide Surveyor with any fringe benefits, including, but not limited to, retirement, health insurance, workers' compensation insurance, unemployment insurance, or sick leave. No additional compensation or alternate form thereof shall be payable by the County to the Surveyor for any purpose whatsoever unless otherwise agreed in writing. The Surveyor shall be responsible for paying all income taxes, Social Security or self-employment taxes and any other taxes or assessments imposed by any governmental body incurred by reason of the County's payment of compensation hereunder to the Surveyor.

3. **PROFESSIONAL SERVICES.** The Surveyor shall, upon request, perform the following professional services to the satisfaction of the County:

- a. Review and evaluate surveys, corner reports, benchmarks, descriptions, and deeds for conformance with ORS Chapters 92 and 209;
- b. Verify computations and statute compliance of surveys, partitions, subdivisions, condominiums, and property vacation orders for conformance to survey standards;
- c. Establish horizontal and vertical control monuments with state plane coordinates and elevations;
- d. Accommodate research of survey records for County departments, land surveyors, and the public to provide, exchange, and clarify information;
- e. Perform monumentation and related note keeping;
- f. Assists the public and professional surveyors in researching public survey records;
- g. Research records for information related to survey projects;
- h. Perform survey computations using survey software on computers or programmable calculator; and
- i. Other surveying services as requested.

4. **STANDARD OF CARE.**

- a. The Surveyor shall perform all services required hereunder in accordance with the same professional skill, care, diligence, and standards as other professionals performing similar services under similar conditions (the "Standard of Care".)
- b. The Surveyor shall prepare, in accordance with the Standard of Care, all drawings, specifications, deliverables, and other documents so that they accurately reflect, fully comply with and incorporate all applicable laws, rules, and regulations, and so that

- they are complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of the Surveyor.
- c. During the term of the Contract, the Surveyor shall obtain, hold, maintain, and fully pay for all licenses required by law for the Surveyor to conduct its business and perform the services required hereunder.
 - d. The Surveyor shall, at no additional cost to the County, render assistance to the County in resolving problems or other issues relating to County Surveyor services.
5. **OWNERSHIP OF WORK PRODUCT.** All work product produced by the Surveyor under this Contract is the exclusive property of the County. "Work Product" includes, but is not limited to: research, reports, computer programs, manuals, drawings, recordings, photographs, artwork, and any data or information in any form. The Surveyor and the County intend that such Work Product shall be deemed "work made for hire" of which the County shall be deemed the author. If for any reason a Work Product is deemed not to be a "work made for hire," the Surveyor hereby irrevocably assigns and transfers to the County all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. The Surveyor shall obtain such interests and execute all documents necessary to fully vest such rights in the County. The Surveyor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. Notwithstanding the foregoing, all pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of the Surveyor are and will remain the exclusive property of the Surveyor.
6. **INDEPENDENT CONTRACTOR.** This agreement is not a contract of employment. The County does not seek to hire the Surveyor as an employee(s) of the County nor does the Surveyor desire to be an employee(s) of the County for performance of the services described herein. The parties intend that the Surveyor, in performing the services specified herein, shall be and act as an independent contractor and shall have professional control of the work and the manner in which it is performed. The Surveyor shall have the sole authority to determine the manner and means of performing the services described herein, and the County shall not interfere with, control, or direct the manner or method in which such services are performed; provided, the County shall direct Surveyor as to the work to be assigned and shall have the right to direct the required results to the extent such direction may be consistent with the nature of the Surveyor's services. The Surveyor shall not be considered an agent of the County, and the County shall not be responsible for any claims, demands, or causes of action of any kind or character arising in favor of any person, on account of personal injuries, or death, or damage to property occurring, growing out of, incident to, or resulting directly or indirectly from the operations or activities of the Surveyor.
7. **AMENDMENT.** This Contract may be amended to the extent permitted by applicable statutes, administrative rules, ordinances, and local ordinances. No amendment shall bind either party unless in writing and signed by both parties.
8. **COMPLIANCE WITH ORS 279B.220.** For all services provided under this Contract, the Surveyor shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the Surveyor or any

subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the County or any subdivision thereof; and (iv) pay to the State of Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If the Surveyor does not pay promptly any claim that is due for the services furnished to the Surveyor by any subcontractor in connection with this Contract, the County may pay such claim and charge that payment against any payment due to the Surveyor under this Contract. The County's payment of a claim does not relieve the Surveyor or its surety, if any, from their obligations for any unpaid claims.

9. HOURS OF LABOR; COMPLIANCE WITH PAY EQUITY PROVISIONS.

- a. Pursuant to ORS 279B.235(3), the Surveyor shall pay the Surveyor's employees who perform work under this Contract at least time and a half for all overtime in excess of 40 hours a week, and for work performed on any legal holiday as specified in ORS 279B.020, except for employees who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
- b. Pursuant to ORS 279B.235(1)(b), the Surveyor shall comply with the prohibition set forth in ORS 652.220. Such compliance is a material element of this Contract and failure to comply is a breach that entitles the County to terminate the Contract for cause.
- c. Pursuant to ORS 279B.235(1)(c), the Surveyor shall not prohibit any of the Surveyor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
- d. Pursuant to ORS 279B.235(5)(b), the Surveyor shall notify, in writing, any person employed by the Surveyor under this Contract, either at the time of hire or before work begins 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 Surveyor may require the employees to work.

10. WORKERS' COMPENSATION. If the Surveyor is a subject employer for workers' compensation or unemployment insurance purposes, Surveyor shall provide such workers' compensation and unemployment coverage benefits at its sole cost and expense and shall provide proof of such insurance and benefits at the County's request. The parties hereto specifically agree that this Contract will render the Surveyor and the Surveyor's employees, if any, ineligible for benefits under ORS 656.029 and that the County shall not be liable for, responsible for, or in any way or manner be required to provide, workers' compensation benefits for the Surveyor or the Surveyor's employees.

11. COMPLIANCE WITH LAWS. The Surveyor shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the provision of services under this Contract, including, without limitation, the provisions of: (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 (Pub L No 101- 336), ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Any violation by Surveyor of any applicable law required in the provision of services hereunder shall constitute breach of this Contract, and Surveyor shall be solely liable for any and all claims arising out of, connected with, or as a result of the violation.

12. **INDEMNIFICATION.** The Surveyor shall defend, indemnify, and hold harmless the County, its officers, agents, and employees from any claims, liabilities, demands, damages, actions, or proceedings arising from or relating to the acts or omissions of the Surveyor in connection with the performance of any services required hereunder. The Surveyor shall be responsible for any damage to property, injury to persons, and any loss, expense, inconvenience, and/or delay that may be caused by, or result from, the carrying out of services under this Contract.

13. **INSURANCE.** The Surveyor shall, at its expense, obtain the following insurance coverage and keep them in effect during the entire term of this Contract:
 - a. Comprehensive General Liability Insurance (including contractual liability and completed operations coverage) with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, covering all activities and operations of the Surveyor;
 - b. Commercial Automobile Liability Insurance, with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, for all owned, non-owned, and hired vehicles used in the performance of the services required hereunder; and
 - c. Professional Liability Insurance, including Errors and Omissions coverage, with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, to protect against all loss suffered by the County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to the work or services provided under this Contract.
 - d. Additional Insurance Requirements:
 - i. All insurance policies shall be written on an occurrence basis and be in effect for the term of this Contract. Written authorization from the County is required for any insurance policy written on a claims-made basis. Any insurance policy authorized to be written on a claims-made basis shall be in effect for the term of this Contract plus for three (3) years after the termination of this Contract.
 - ii. Insurance coverage shall apply on a primary and non-contributory basis.
 - iii. Prior to commencing services, the Surveyor shall furnish current Certificate(s) of Insurance for all required insurance to the County. The insurance must be provided by an insurance company or entity that is authorized to transact the business of insurance and issue coverage in the State of Oregon, with an AM best rating of at least A-. The Certificate shall provide, by policy endorsement, if necessary, that the County, its officers, employees, agents, and volunteers are additional insureds with respect to the Surveyor's services provided under this Contract and that there shall be no cancellation, termination, non-renewal, material change to, potential exhaustion of aggregate limits, or reduction of limits of the required insurance without at least 30 days written notice from the Surveyor or its insurer to the County. If requested, the Surveyor shall provide complete copies of insurance policies to the County.

14. **TERMINATION.**
 - a. County's Termination for Convenience. The County may terminate this Contract in whole or in part whenever the County determines that termination of the Contract is

in the best interest of the County. The County will provide the Surveyor with written notice of a termination for convenience at least thirty (30) calendar days before the intended termination date. Such termination shall be without liability or penalty, and in no circumstance shall Surveyor be entitled to lost profits for work not performed due to termination. No termination for convenience shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.

- b. County's Termination for Cause. The County may immediately terminate this Contract without liability or penalty for either of the following causes by the mailing of written notice to the Surveyor at the Surveyor's address provided herein, specifying the cause:
 - i. The Surveyor breaches any of the provisions of this Contract;
 - ii. The Surveyor no longer holds all licenses or certificates that are required to perform the services required under this Contract;
 - iii. The County lacks lawful funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow the County, in the exercise of its reasonable discretion, to pay for the Surveyor's services; or
 - iv. Federal, state, or local laws, regulations, or guidelines are modified or interpreted in such a way that either the services under this Contract are prohibited, or the County is prohibited from paying for such services from the planned funding source.
 - c. Surveyor's Termination for Cause. The Surveyor may terminate this Contract for cause if the County fails to pay the Surveyor pursuant to this Contract. The Surveyor may also terminate this Contract for cause if the County commits any material breach or default of any covenant, warranty, obligation, or agreement under this Contract and such breach or failure is not cured within thirty (30) calendar days after delivery of the Surveyor's notice, or such longer period as the Surveyor may specify in such notice.
 - d. Surveyor's Termination for Convenience. The Surveyor may terminate this Contract in whole or in part without specifying any reason for termination by providing the County with written notice of his intent to terminate, mailed at least thirty (30) days before the intended termination date. Such termination shall be without liability or penalty. No such termination shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.
15. **FORCE MAJEURE**. Neither the County nor the Surveyor shall be held responsible for delay or default caused by fire, riot, civil disobedience, acts of God, or war where such cause was beyond the reasonable control of the County or the Surveyor. The Surveyor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. The risk of loss or damage to the subject matter of this agreement shall be upon the Surveyor until such time as the County has accepted the services required hereunder:
16. **ASSIGNMENT; DELEGATION; SUCCESSOR**. The Surveyor shall not assign, delegate, nor transfer any of its rights or obligations under this Contract without the County's prior written consent. The County's written consent does not relieve the Surveyor of any obligations under this Contract, and any assignee, transferee, or delegate is considered the Surveyor's agent. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their respective successors and assigns.

17. **GOVERNING LAW, JURISDICTION, VENUE, & ATTORNEY FEES.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the County (and/or any other agency or department of Yamhill County) and the Surveyor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. The Surveyor hereby consents to the *in personam* jurisdiction of said courts. Each party shall be responsible for the party's attorney fees, costs and disbursements at all times including appeals.
18. **RECORDS.** The Surveyor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, the Surveyor shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Surveyor's performance hereunder. The Surveyor acknowledges and agrees that the County, the Oregon Secretary of State's Office, the Federal Government and their duly authorized representatives shall have access to such fiscal records and all other documents that are pertinent to this Contract for the purpose of performing audits and examinations and making transcripts and excerpts. All such fiscal records and pertinent documents shall be retained by the Surveyor for a minimum of six (6) years (except as required longer by law) following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
19. **NOTICES.** All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:
- County: Planning Department
ATTN: Ken Friday
535 NE 5th Street
McMinnville, Oregon 97128
fridayk@yamhillcounty.gov
- Surveyor: TerraCalc Land Surveying Inc.
ATTN: Darren Harr
1615 NE Miller St.
McMinnville, OR 97128
darren@terra-calc.com
20. **FOREIGN SURVEYOR.** If the Surveyor is not domiciled in or registered to do business in the State of Oregon, the Surveyor 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. The County shall withhold final payment under this Contract until the Surveyor has met this requirement.

21. TAX CERTIFICATION. The Surveyor hereby certifies that it is not in violation of any Oregon Tax Laws and that it shall continue to comply with Oregon Tax Laws during the term of this Contract. Pursuant to ORS 279B.045, the Surveyor's failure to comply with the Oregon Tax Laws is considered a default for which the County may terminate the Contract and seek damages and other relief as available. For purposes of this certification, "Oregon Tax Laws" means those programs listed in ORS 305.380(4).
22. WAIVER. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract, or the waiver by that party of the ability to enforce that or any other provision in the event of any subsequent breach.
23. ENTIRE AGREEMENT. This Contract constitutes the entire agreement between the parties on the subject matter hereof. No waiver, consent, modification or change of terms or provisions 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.
24. COUNTERPARTS. This Contract and any subsequent amendments may be executed in any number of counterparts (including by facsimile, PDF, or other electronic transmission), each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one agreement binding on all parties.
25. SEVERABILITY. If any provision of this Contract shall be held invalid or unenforceable by any court or tribunal of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision, and the obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
26. SURVIVAL. All rights and obligations shall cease upon termination of this Contract, except for those rights and obligations that by their nature or express terms survive termination of this agreement. Termination shall not prejudice any rights or obligations accrued to the parties prior to termination.

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN 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 FOR 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. THE SURVEYOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

[remainder of page intentionally blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, this Contract on the date indicated by their duly authorized officials.

SURVEYOR

NSA
Signature

Darren S. Harr
Name (printed)

Professional Land Surveyor
Title

06/04/2024
Date

YAMHILL COUNTY

DocuSigned by:
Kenneth Huffer
0A706E460B27442...
Signature

Kenneth Huffer
Name (printed)

County Administrator
Title

6/6/2024
Date

APPROVED AS TO FORM

By: *Jodi Gollehon*
EB8F66B7BD68446...
Jodi Gollehon, Assistant County Counsel

Approved by the Yamhill County
Board of Commissioners on 6/6/24
via Board Order 24-153