

## AGREEMENT FOR FEDERAL LAND APPRAISALS

This agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the Idaho Legislature, Committee on Federalism, P.O. Box 83720, Idaho State Capitol, Room W 133, Boise Idaho 83720-00\_\_ (the "Client"), and \_\_\_\_\_, [address] (the "Independent Contractor").

### *RECITALS*

- A. Client issued a Request for Proposals to establish and implement a process for appraisal of federal land within Idaho.
- B. Client selected Independent Contractor to perform the services desired by the Client.
- C. Independent Contractor is willing to perform appraisals for Client under the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein contained, the parties agree as follows:

1. *Scope of Work.* The Client desires that the Independent Contractor perform, and the Contractor agrees to perform the work set forth on Exhibit A, which is attached hereto and incorporated by this reference.

2. *Terms of Payment.* Client shall pay the Independent Contractor as set forth on Exhibit B for all work it performs pursuant to this Agreement. Exhibit B is attached hereto and incorporated by this reference.

3. *Reimbursement of Expenses.* Client shall not be liable to the Independent Contractor for any expenses it pays or incurs unless otherwise agreed to in writing by the Client.

4. *Equipment, Tools, Materials, or Supplies.* The Independent Contractor shall supply, at his sole expense, all equipment, tools, materials or supplies to accomplish the work to be performed.

5. *Work Product and Ownership of Materials and Information.*

5.1 *Ownership of State Materials and Information.* Except as specifically provided otherwise in the Agreement, the State shall own and retain all rights to hardware and other goods purchased by the State and to information, materials, procedures, software, techniques, know-how, processes and data furnished to the Independent Contractor under this Agreement. Information, materials and data include, but are not limited to \_\_\_\_\_.

5.2 *Intellectual Property.* All deliverables, information, documents, materials, instruments, manuals, procedures, processes, data analyses, and reports, including appraisal reports created or compiled by the Independent Contractor in furtherance of the work described in this Agreement (the "Intellectual Property") shall be the property of the State. Independent Contractor grants to the State a royalty-free, nonexclusive, transferable, sub-licensable, and irrevocable license to any and all patented or copyrighted or patentable or copyrightable works not conceived or first produced by Independent Contractor in the performance of this Agreement, but which are incorporated in any materials furnished under this Agreement to the State by Independent Contractor. To the extent that any Intellectual Property constitutes a "work" within the meaning of United States patent and copyright laws, it shall be a "work made for hire." The Independent Contractor shall acquire releases or establish contract provisions in its dealings with employees and subcontractors in order to secure the State's rights. Copyright and patent notices shall be included on Intellectual Property, which may include acknowledgments of the Independent Contractor's efforts. In the event that a court or tribunal of competent jurisdiction determines that any Intellectual Property is not a work for hire as a matter of law, the Independent Contractor hereby assigns and conveys to the State all right, title, and interest in the Intellectual Property and require its employees and subcontractors to do the same. Independent Contractor further agrees to assist the State in every proper way to protect the Intellectual Property, including, but not limited to, signing patent and copyright applications, oaths or declarations, and assignments in favor of the State relating to the Intellectual Property, as well as such ancillary and confirmatory documents as may be required or appropriate to insure that such title is clearly and exclusively vested in the State.

6. *Federal, State and Local Payroll Taxes.* Neither federal nor state, nor any other payroll tax of any kind, shall be withheld or paid by the Client on behalf of the Independent Contractor or his employees. In accordance with the terms of this Agreement and the understanding of the parties, the Independent Contractor shall not be treated for tax purposes as an employee with respect to the services performed.

7. *Fringe Benefits.* Because the Independent Contractor is engaged in his own independent contract business, it is not eligible for, nor entitled to, and shall not participate in, any of the Client's or the State of Idaho's pension, health or other fringe benefit plans.

8. *Notice to the Independent Contractor Regarding its Tax Duties and Liabilities.* The Independent Contractor understands that it is responsible to pay his income tax in accordance with federal and state law. The Independent Contractor further understands that it may be liable for Social Security taxes, to be paid in accordance with all applicable laws.

9. *Insurance.* The Independent Contractor shall maintain insurance of the types and in the amounts reasonably satisfactory to Client, including, but not limited to, comprehensive general liability insurance in the minimum amount of \$1,000,000 per occurrence, and professional malpractice insurance, all with insurance companies properly licensed to do business in Idaho and reasonably satisfactory to the Client.

10. *Indemnification.*

10.1 Independent Contractor shall indemnify, defend, and save harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Independent Contractor's acts or omissions under this Agreement or Contractor's failure to comply with any state or federal statute, law, regulation, or rule.

10.2 Upon receipt of the State's tender of indemnity and defense, Independent Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State. Independent Contractor's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under this Agreement. However, if it is determined by a final judgment that the State's negligent act or omission is the sole proximate cause of a suit or claim, the State shall not be entitled to indemnification from Independent Contractor with respect to such suit or claim, and the State, in its discretion, may reimburse Independent Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to section 11.3.

10.3 Any legal defense provided by Independent Contractor to the State under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code sections 67-1401(13) and 67-1409(1).

11. *Client Not Responsible for Worker's Compensation.* Because the Independent Contractor is engaged in its own independent contracting business and is not an employee of the Client, Client will not obtain worker's compensation insurance for the Independent Contractor or his employees. The Independent Contractor agrees to obtain worker's compensation coverage as required by law his employees and to obtain coverage for himself. Independent Contractor shall furnish a copy of his certificate of worker's compensation insurance to the Client upon Client's demand.

12. *Term.* This Agreement's term shall begin on the date hereof and shall remain in force until \_\_\_\_\_.

13. *Termination.* Either party may terminate the Agreement at any time by giving sixty (60) days' written notice to the other. Either party may terminate this Agreement immediately upon written notice if at any time the other party is in material breach of any warranty, term, condition, covenant or obligation under this Agreement and fails to cure that breach within ten (10) days written notice thereof. Notwithstanding a termination, the Independent Contractor's obligations to provide follow-up services on work currently in progress shall remain in effect until such services are completed.

14. *Notices.* Any notice given in connection with this Agreement shall be in writing and shall be delivered either by hand to the other party, by certified mail, postage prepaid, return

receipt requested, to the address provided above. Notice shall be deemed delivered immediately upon personal service or facsimile transmission or forty-eight (48) hours after depositing notice or demand in the United States mail. Either party may change its address by giving written notice of the change to the other party.

15. *No Authority to Bind Client.* The Independent Contractor has no authority to enter into contracts or agreements on behalf of the Client. This Agreement does not create a partnership between the parties and nothing contained in this Agreement shall be interpreted to create an employer-employee, master-servant, or principal-agent relationship between the Client and Independent Contractor in any respect.

16. *Confidentiality.* Any and all reports, analyses and data, whether statistical or otherwise, transmitted to the Client by Independent Contractor shall become the property of the Client for such uses as it shall deem appropriate and shall not be disclosed to any person without prior written consent of the Client. In addition, except as may be required by applicable law or in any governmental or judicial proceeding or inquiry, and then only upon timely notice to the Client, Independent Contractor shall maintain strict confidence with respect to the Client and all of its services under this Agreement. The Client may require that Independent Contractor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. This obligation shall survive termination of this Agreement.

17. *Assignment.* Neither party may assign its rights or delegate its duties, in whole or in part, without the prior written consent of the other.

18. *Waiver.* The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

19. *Modification.* No change, modification, or waiver of any term of this Agreement shall be valid unless it is in writing and signed by both the Client and the Independent Contractor.

20. *Entire agreement.* This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements or understandings between the Client and the Independent Contractor.

21. *Attorneys' Fees.* In the event a lawsuit of any kind is instituted under this Agreement or to obtain performance of any kind under this Agreement, the prevailing party shall be entitled to additional sums as the court may adjudge for reasonable attorneys' fees, subject to the other party's right to appeal.

22. *Applicable law.* This Agreement shall be governed by, construed, and enforced in accordance with, the laws of Idaho without regard to its conflicts of law principles.

23. *Jurisdiction and Venue.* The parties consent to the jurisdiction of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to this Agreement.

24. *Legal Compliance.* Independent Contractor agrees to comply with all applicable requirements of federal and state statutes, rules, and regulations.

25. *Force Majeure.* Neither party shall be liable for or deemed to be in default for any delay or failure to perform under this Agreement if such delay or failure to perform results from an act of God, civil or military authority, act of war, riot, insurrection, escalation of hostilities, or other occurrence beyond that party's control. In such case, the intervening cause must not be caused by the party asserting it and the excused party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

26. *Fiscal Necessity and Non-Appropriation.* The Client is a government entity and it is understood and agreed that the Client's payments herein provided for shall be paid from Idaho State Legislative appropriations. The Legislature is under no legal obligation to make appropriations to fulfill this Agreement. This Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time.

The Client reserves the right to terminate this Agreement in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments, or requires any return or "give-back" of funds required for the Client to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if the Client discontinues or makes a material alteration of the program under which funds were provided. The Client shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable.

All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the Independent Contractor. Further, in the event of non-appropriation, the Client shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom.

27. *Officials, Agents and Employees of Client Not Personally Liable.* It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Idaho be in any way liable or responsible for any covenant or agreement, whether expressed or implied, nor for any statement, representation or warranty made in or in connection with this Agreement. In particular, and without limitation of the foregoing, no full-time or part-time agent or employee of the Client shall have any personal liability or responsibility under this Agreement, and the sole responsibility and liability for the performance of this Agreement and all of the provisions and covenants contained in this Agreement shall rest in and be vested with the State of Idaho.

28. *Headings.* The headings have been inserted for convenience solely and are not to be considered when interpreting the provisions of this Agreement.

39. *Counterparts.* This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

30. *Sovereign Immunity.* Nothing in this Agreement shall be construed as a waiver of the Client's or State's sovereign immunity, which immunity is hereby expressly reserved.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective representatives duly authorized so to do on the last date and year written below.

Idaho Legislature, Committee on Federalism:

\_\_\_\_\_  
Senator Steve Vick, Co-Chair  
Date: \_\_\_\_\_

\_\_\_\_\_  
Representative Sage G. Dixon, Co-Chair  
Date: \_\_\_\_\_

[Independent Contractor]:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_