

Council Business Meeting

July 6, 2021

Agenda Item	Approval of Personal Services Contract with Douglas McGeary for Legal Services	
From	Katrina Brown	Interim City Attorney
Contact	katrina.brown@ashland.or.us	

SUMMARY

The City Council is being asked to approve a personal services contract with Douglas McGeary, Attorney at Law, for the provision of legal services and to authorize the City Manager Pro Tem to sign the contract.

POLICIES, PLANS & GOALS SUPPORTED

Comply with Ashland Municipal Code Section 2.28.230 and 2.28.240.

2019-2021 City Council Goals & Priorities

- Essential Services

PREVIOUS COUNCIL ACTION

N/A

BACKGROUND AND ADDITIONAL INFORMATION

As the result of David Lohman's retirement on July 1, 2021, the City's Legal Department will be losing one full-time attorney. In order to maintain an appropriate level of support for the City as a whole, the Legal Department will need to contract with outside legal counsel on a part-time basis while the City conducts a competitive search for a new City Attorney. Douglas McGeary has previously provided legal services to the City and is familiar with its operations. He will primarily provide support in the Ashland Municipal Court and for specialized projects.

Pursuant to Ashland Municipal Code 2.50.120.A.1., outside legal counsel, with the exception of those providing indigent criminal defense services, are subject to the approval of the City Council.

FISCAL IMPACTS

The Legal Department has funding and existing appropriations available. Contracting for part-time legal services while the City conducts a search for a new City Attorney will result in short-term savings for the department.

STAFF RECOMMENDATION

Staff recommends that the Council approve the personal services contract with Douglas McGeary and authorize the City Manager Pro Tem to sign the contract.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

1. I move to approve the personal services contract with Douglas McGeary and to authorize the City Manager Pro Tem to sign the contract.

REFERENCES & ATTACHMENTS

Attachment 1: Personal Services Contract with Douglas McGeary for Legal Services

PERSONAL SERVICES CONTRACT

This contract is between City of Ashland, a municipal corporation in the State of Oregon, hereinafter called "City", and Contractor hereinafter called "Contractor". The parties agree as follows:

1. Contractor's information:

NAME (tax filing): Douglas M McGeary Attorney at Law LLC

ADDRESS: 2 N. Oakdale Ave., Medford, OR 97501
doug@douglasmmcgeary.com

CITIZENSHIP, if applicable: _____
Non-resident alien Yes No

BUSINESS DESIGNATION (check one):

- Corporation General Partnership
- Limited Partnership Governmental/Non-Profit
- Limited Liability Company Limited Liability Partnership
- Sole Proprietorship

Federal Tax ID#: 26-1417718

SSN#: N/A

(Contractor must provide Contractor's Social Security Number unless it provides a federal TID number).

Oregon Business License#: N/A

2. Description of Contractor's Services, Delivery Schedule and Compensation: **Exhibit A** **Scope of Work**

3. Compensation by City: Payment for all work performed under this contract shall be made as set forth below from available and authorized City funds, and shall not exceed the maximum sum of Payment for all work performed under this contract shall not exceed the maximum sum of: See Exhibit A. Travel and other expenses of the Contractor shall not be reimbursed by City unless specifically provided herein as a supplementary condition.

a. Interim payments shall be made to Contractor following City's review and approval of billings submitted by Contractor. Contractor will also submit copies of other billings for work performed under the contract when such bills are to be paid by other parties. These other billings are not subject to the maximum compensation amount of this contract.

b. Contractor shall not submit billings for, and City will not pay, any amount in excess of the maximum compensation amount of this contract, including any travel and other expense when noted below. If the maximum compensation amount is increased by amendment to this contract, the amendment must be fully effective before Contractor performs work subject to the amendment. Contractor shall notify City's supervising representative in writing 30 calendar days before this contract expires of the upcoming expiration of the contract. No payment will be made for any services performed before the beginning date or after the expiration date of this contract. This contract will not be amended after the expiration date.

c. Contractor shall submit bi-weekly billings for work performed. The billings shall describe all work performed with particularity, by whom and on the date it was performed, the number of hours spent performing such work, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be sent to the supervising representative.

4. Effective Date and Duration: This Contract shall become effective on duration from July 13, 2021 or the date this Contract is fully executed and approved as required by applicable law. Unless earlier terminated or extended, this contract shall expire on June 30, 2022, or when Contractor's completed performance has been accepted by City, **whichever event occurs first**. However, such expiration shall not extinguish or prejudice City's right to enforce this contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor's performance that has not been cured.

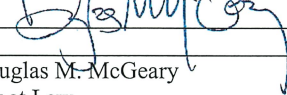
5. Contract Documents: This contract between the parties consists of

this Personal Services Contract, Scope of Work (**Exhibit A**), General Conditions (**Exhibit B**) Compliance with Applicable Laws (**Exhibit C**) and the following attached documents, if checked, which contain all the terms and conditions of the contract and are incorporated by this reference:

- Exhibit D** Supplementary Conditions
- Exhibit E** Required Federal Terms and Conditions

6. Amendments: The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties.

IN WITNESS WHEREOF, THE PARTIES OR THEIR DULY AUTHORIZED REPRESENTATIVES HAVE SIGNED THIS CONTRACT:

 06/29/21
Contractor Douglas M. McGeary (Date)
Title: Attorney at Law

City of Ashland, City Attorney _____ (Date)

CERTIFICATIONS/REPRESENTATIONS: Contractor, under penalty of perjury, certifies that (a) the number shown on this form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Contractor is not subject to backup withholding because (i) it is exempt from backup withholding or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Contractor further represents and warrants to City that (a) it has the power and authority to enter into and perform the work, (b) the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (c) the work under the Contract shall be performed in accordance with the highest professional standards, and (d) Contractor is qualified, professionally competent and duly licensed to perform the work. Contractor also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, and it is a corporation authorized to act on behalf of the entity designated above and authorized to do business in Oregon or is an independent contractor as defined in the contract documents, and has checked four or more of the following criteria:

(1) I carry out the labor or services at a location separate from my residence or is in a specific portion of my residence, set aside as the location of the business.

(2) Commercial advertising or business cards or a trade association membership are purchased for the business.

(3) Telephone listing is used for the business separate from the personal residence listing.

(4) Labor or services are performed only pursuant to written contracts.

(5) Labor or services are performed for two or more different persons within a period of one year.

(6) I assume financial responsibility for defective workmanship or

for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

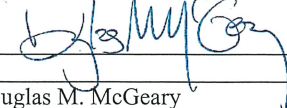
 06/29/21
Contractor Douglas M. McGeary (Date)

Exhibit A SCOPE OF WORK

Description of Contractor's Services, Delivery Schedule and Consideration:

Provide legal advice and/or services in areas of municipal law to assigned city departments, and mayor and city council.

Rate:

A. Review, charge and prosecute municipal criminal and code violations.

\$125.00/hour, no retainer.

B. Routine legal advice, consultation and opinions of the City Council and staff;

\$125.00/hour, no retainer.

C. Assistance in the preparation and review of ordinances, resolutions, agreements, contracts and related documents:

\$125.00/hour, no retainer.

Exhibit B GENERAL CONDITIONS

1. Independent Contractor; Responsibility for Taxes and Withholding; Retirement System Status:

a. Contractor shall perform the work required by this contract as an independent contractor. Although the City reserves the right (i) to determine (and modify) the delivery schedule for the work to be performed and (ii) to evaluate the quality of the completed performance, the City cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.

b. The Contractor represents and warrants that Contractor (i) is not an employee of City of Ashland, Oregon, (ii) is not currently employed by the Federal Government, and (iii) meets the specific independent contractor standards of ORS 670.600, as certified on the foregoing **Certification Statement for Corporation or Independent Contractor**. Contractor is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.

c. Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this contract and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amounts(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this contract, except as a self-employed individual.

2. Subcontracts and Assignment: Contractor shall not enter into any subcontracts for any of the Work required by this Contract or assign or transfer any of its interest in this Contract without City's prior written consent. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of City. City's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

3. Successors and Assigns: Neither party shall subcontract, assign or transfer its interest in this Contract without the express written consent of the other party, and such consent shall not be unreasonably withheld. In addition to any other provisions, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound to the same provisions herein as if the subcontractor were the Contractor. 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. Consent of City given to a subcontractor does not

D. Attendance at any City Council meetings, and other meetings as necessary.

\$125.00/hour, no retainer.

E. Monitor pending and current State and Federal legislation and case law as appropriate.

No charge.

Travel is charged at \$30/hour for any travel exceeding one half hour and is charged in lieu of standard legal services rate.

After six month from effective date of contract, Contractor reserves opportunity to adjust its rates.

Contractor's hours shall not exceed twenty (20) hours a week unless first notifying city or interim city attorney and additional time is approved.

Total Contract not to exceed \$40,000.00.

relieve the Contractor of any obligations and responsibilities under this Contract, including Contractor's responsibility for any goods and services to be provided by any subcontractor.

4. No Third Party Beneficiaries: City and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this contract.

5. Funds Available and Authorized: City has sufficient funds currently available and authorized for expenditure to finance the costs of this contract within the City's fiscal year budget.

6. Termination:

a. Mutual Consent. This contract may be terminated at any time by mutual consent of both parties.

b. Parties' Convenience. This contract may be terminated at any time by either Party upon 30 days' notice in writing and delivered by certified mail or in person.

c. For Cause. City may terminate or modify this contract, in whole or in part, effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

i. If City funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;

ii. 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; or

iii. If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this contract is for any reason denied, revoked, suspended, or not renewed.

d. For Default or Breach.

i. Either City or Contractor 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 15 days of the date of the notice, or within such other period as the party giving the notice may authorize or require, then the contract may be terminated at any time thereafter by a written

notice of termination by the party giving notice.

ii. Time is of the essence for Contractor's performance of each and every obligation and duty under this contract. City, by written notice to Contractor of default or breach, may at any time terminate the whole or any part of this contract if Contractor fails to provide services called for by this contract within the time specified herein or in any extension thereof.

iii. The rights and remedies of City provided in this subsection d are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

e. Obligation/Liability of Parties. Termination or modification of this contract pursuant to subsections a, b or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to subsections a, b, c or d of this section 6 Contractor shall immediately cease all activities under this contract, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Contractor shall deliver to City all contract documents, information, works-in-progress and other property that are or would be deliverables had the contract been completed. City shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract.

7. Records Maintenance; Access; Ownership of Work Product; License:

a. Records Maintenance; Access. Contractor shall maintain records pertinent to this contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that City and its duly authorized representatives shall have access to such fiscal records and to all other books, documents, electronic files, papers, plans and writings of Contractor that are pertinent to this contract for the purpose of performing examinations and audits, and making excerpts and transcripts. Contractor further acknowledges records generated as a result of this Contract may be subject to disclosure pursuant to the Oregon Public Records Act.

b. Ownership of Work Product; License. All work products of the Contractor that result from this contract ("the work products") are the exclusive property of the City. In addition, if any of the work products contain intellectual property of the Contractor that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Contractor hereby grants City a perpetual, royalty-free, fully paid-up, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part, and to authorize others to do so, all such work products, including but not limited to any information, designs, plans or works provided or delivered to the City or produced by the Contractor under this contract.

8. Compliance with Applicable Law: Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279B.220, 279B.230, and 279B.235, and as well as other statutes as set forth in the attached **Compliance With Applicable Law**, which is by this reference made a part hereof. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (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 659A.142, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal, state and local civil rights and rehabilitation statutes, rules and regulations.

9. Foreign Contractor: If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor 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 Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this contract.

10. Governing Law; Jurisdiction; Venue: 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 City (and/or any other City or department of the State

of Oregon) and the Contractor that arises from or relates to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. If, however, 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 filed in Jackson County, Oregon. Contractor, by the signature herein of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts. In no event shall this section be construed as a waiver by City of any form of defense or immunity, based on the Eleventh Amendment to the United States Constitution, or otherwise, from any claim or from the jurisdiction.

11. Insurance:

a. Insurance. Contractor shall at its own expense provide the following insurance:

i. **Worker's Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.

ii. **Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$200,000 for each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract.

iii. **General Liability** insurance with a combined single limit, or the equivalent, of not less than \$ (see Certificate of Liability) for each occurrence for Bodily Injury and Property Damage.

iv. **Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$N/A for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

v. **Umbrella/Excess Liability** insurance with combined single limits/annual aggregate of not less than \$N/A for Bodily Injury and Property Damage.

c. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days' written notice from the Contractor or its insurer(s) to the City.

12. Left for insertion.

13. **Force Majeure:** Neither City nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond, respectively, City's or Contractor's reasonable control. Contractor 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.

14. **Severability:** The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and 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.

15. **Survival:** The terms, conditions, representations and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

16. **Waiver:** The failure of either party to enforce any provision of this contract shall not constitute a waiver by either party of that or any other provision.

17. **Execution and Counterparts:** This contract may be exercised in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

18. **Prior Approval Required:** Approval by the City of Ashland City Council or the City Manager is required before any work may begin under this contract.

19. **Notice:** Notices required by this contract must be given in writing by personal delivery or mail, at the addresses given by the parties on the first page of this contract, unless some other means or method of notice is

required by law. Each party will notify the other of any change of address.

20. Confidentiality: Contractor acknowledges and agrees it is responsible for ensuring compliance with all applicable confidentiality laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) and Family Educational Rights and Privacy Act (FERPA).

21. Merger Clause: THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT 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 CONTRACT. CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Exhibit C COMPLIANCE WITH APPLICABLE LAW
(Public NonImprovement Contracts)

ORS 279B.220 Conditions of public contracts concerning payment of laborers and materialmen, contributions to Industrial Accident Fund, liens and withholding taxes. Every public contract shall contain a condition that the Contractor shall:

- vi. Make payments promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.
- vii. Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.
- viii. Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of labor or material furnished.
- ix. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

279B.225 Condition concerning salvaging, recycling, composting or mulching yard waste material. Every public contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.

ORS 279B.230 Condition concerning payment for medical care and providing workers' compensation. (1) Every public contract shall also contain a condition that the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

(2) Every public contract also shall contain a clause or condition that all employers working under the contract are subject employers that will comply with ORS 656.017 or are exempt under ORS 656.126.

ORS 279B.235 Condition concerning hours of labor. (1) Except as provided in subsections (3) to (6) of this section, every public contract subject to this chapter must contain a condition that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay: (a)(A) For all overtime in excess of eight

hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (b) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020. (2) An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work 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 employees may be required to work. (3) In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime. (4) In the case of a contract for services at a county fair or for other events authorized by a county fair board, the contract must contain a provision that employees must be paid at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. An employer shall give notice in writing to employees who work on such a contract, either at the time of hire or before commencement of work 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 employees may be required to work. (5)(a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater. [HB 2214]

ORS Chapter 244. Contractor shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer, employee or agent of the City in connection with this contract in violation of ORS Chapter 244 or City's personnel rules.

ORS 670.600 provides in part: "As used in various provisions of ORS Chapters 316, 448, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an 'independent contractor' if the standards of this section are met." ORS 670.600 also provides standards for satisfying the designation of an independent contractor:

1. Free from direction and control over means and manner of providing labor or service.
 2. Responsible for obtaining all necessary business registrations and professional occupation licenses.
 3. Furnishes its own tools and equipment for the work.
 4. Has the authority to hire and fire employees to perform the work.
 5. Registered under ORS Chapter 701.
 6. Filed federal and state income tax returns in the name of its business or a business Schedule "C" as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.
 7. Represents to the public that the labor or services are to be provided by an independently established business.
 8. The labor or services are primarily carried out at a location that is separate from my residence, or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
 9. The business has purchased business cards or commercial advertising.
 10. A telephone listing and service is used for the business that is separate from the personal residence listing and service.
 11. Labor or services are performed only pursuant to written contracts.
- Labor or services are performed for two or more different persons within a period of one year.
12. Assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability relating to the labor or services to be provided.