



AGENDA COVER MEMO

Memorandum Date: December 21, 2022

Order Date: January 10, 2023

TO: Board of County Commissioners

DEPARTMENT: Sheriff's Office

PRESENTED BY: Debby Haller, Finance Manager

AGENDA ITEM TITLE: ORDER/IN THE MATTER OF APPROVING A CONTRACT WITH JOHNSON BRODERICK ENGINEERING FOR AN AMOUNT NOT TO EXCEED \$240,000 TO PROVIDE PERMITTING GUIDANCE IN THE CONSTRUCTION AT COMMUNICATIONS TOWER SITES IN LANE COUNTY AND DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR TO SIGN THE CONTRACT

I. MOTION

Move approval of a contract with Johnson Broderick Engineering for an amount not to exceed \$240,000 to provide permitting guidance in the construction at four communication sites in Lane County and delegate authority the County Administrator to sign the contract.

II. AGENDA ITEM SUMMARY

Lane County Sheriff's Office (LCSO) will be constructing new communication towers and buildings at four locations within Lane County and sought out assistance with the permitting process through a Request for Proposal.

Johnson Broderick Engineering was the successful bidder on the project and the Board is being asked to approve the contract for services.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

In July, the County was notified that funding for several projects had been awarded through Oregon House Bill 5202. One of the projects is for Lane County Emergency Response Functionality in the amount of \$5,000,000. The Board of Commissioners approved the award on Order #22-07-12-08.

LCSO posted an RFP for Consulting Services for Permitting and received two

responses. These were both scored by a committee and Johnson Broderick Engineering was the successful bidder. They are proposing a contract in an amount not to exceed \$240,000 for their services to guide the LCSO through land use processes and procedures.

Four communication sites in Lane County will be upgraded to house current and future communication needs for the LCSO and Lane Regional Interoperability Group (LRIG). The sites being upgraded are Indian Ridge, Mapleton, Nebo and Badger Mountain.

These upgrades include newer towers to replace condemned towers or expanding tower space. Three of the sites need new structures to replace unusable or inadequately sized buildings for current and future growth and for meeting manufacturers specifications for sites supporting their communications equipment housed in those facilities (HVAC, Grounding, etc.). Adequate backup power systems are also needed at these sites as none exist today outside of commercial or inadequately sized solar plants.

LCSO does not have the resources or knowledge to manage the permitting for these communication sites. Having the expertise of JBE will ensure the process goes smoothly and with as few obstacles as possible.

B. Policy Issues

Per Lane Manual 20.600.310 C2, the County Administrator is delegated authority to sign contracts in excess of \$150,000 with approval from the Board of County Commissioners.

C. Board Goals

Upgrading communication sites fits in the County's Strategic Plan under Safe, Healthy County and Robust Infrastructure.

D. Financial and/or Resource Considerations

Funding through House Bill 5202 will be used for this project.

E. Health Implications

None

F. Analysis

The upgrades to the four communication sites using the funding provided through HB5202 will ensure the system, as a whole, can support the users with as few disruptions as possible. These users include law enforcement, utility companies and public works departments.

G. Alternatives/Options

1. Approve the contract with Johnson Broderick Engineering.
2. Do not approve the contract and direct staff to find an alternative method of navigating the permitting process.

IV. RECOMMENDATION

Staff recommends Option 1.

V. TIMING/IMPLEMENTATION

Implementation will begin within 30 days for the permitting/land use process. Site visits will begin as the first step with JBE, then scoping of each site and specific needs will follow before submitting with County Permitting office.

VI. ATTACHMENTS

Board Order
RFP
JBE Contract

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 23-01-10-13

In the Matter of APPROVING A CONTRACT
WITH JOHNSON BRODERICK
ENGINEERING FOR AN AMOUNT NOT TO
EXCEED \$240,000 TO PROVIDE
PERMITTING GUIDANCE IN THE
CONSTRUCTION AT COMMUNICATIONS
TOWER SITES IN LANE COUNTY AND
DELEGATING AUTHORITY TO THE
COUNTY ADMINISTRATOR TO SIGN THE
CONTRACT

WHEREAS, the Board of Commissioners accepted a \$5,000,000 award through Oregon House Bill 5202 for Emergency Response Functionality; and

WHEREAS, the Lane County Sheriff's Office has four communications sties identified for upgrades which will require land use permits; and

WHEREAS, the Sheriff's Office posted an RFP for a permitting consultant and Johnson Broderick Engineering was the successful bidder; and

WHEREAS, per Lane Manual 20.600.310, the Board of County Commissioners must approve all contracts in excess of \$150,000.

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. Approve a contract with Johnson Broderick Engineering in an amount not to exceed \$240,000.
2. Delegate authority to the County Administrator to sign the contract.

ADOPTED this 10th day of January, 2023.

Chair
Lane County Board of Commissioners



REQUEST FOR PROPOSAL

Consultant Services for Tower Site Construction Permitting

Responses due:

11/9/2022

(11:59PM, PST)

LANE COUNTY

Sheriff's Office

125 E 8th St

Eugene, OR, 97402

Project Owners: Brian Greig

Procurement Contact: Debby Haller

Purpose & Goal of the RFP

Lane County is seeking quotes from qualified vendors who provide filling and guidance in construction of Communications Tower and buildings in the rural areas of Lane County.

Background Information

Lane County is an urban/rural county of 4,610 square miles, roughly the size of the state of Connecticut, with a population of 345,880. The county stretches from the Cascade Mountains to the Pacific Ocean. Approximately 61% of the county's population reside in Eugene and Springfield, which is the second largest urban area in Oregon.

Contact Information for RFP

From the issue date of this RFP until the response deadline date, the sole point of contact will be Debby Haller, unless stated otherwise.

Debby Haller, Fiscal Manager
Lane County Sheriff's Office

125 E 8th St
Eugene, OR, 97402
541-682-7409
Email: debby.haller@lanecountyor.gov

Questions and Answers

Please email all questions NO LATER than 11/2/2022 to Debby Haller.

County will post addendum to Oregon Buys as questions are answered. It is the responsibility of each interested bidder to check Oregon Buys often for updates, answers to questions or extensions of the timelines.

RFP Instruction

- a) Please be brief, concise, and focused on the question asked.
- b) Do not skip questions. If a question is not applicable, please state reason.
- c) When finished, copy and paste only the RFP Response Section into a separate Word document and save the electronic file in pdf format, titled: **LC RFP - Consultant Services for Tower Site Construction Permitting**.

d) If submitting in person, place printed copies in a sealed envelope, clearly marked on the outside with your firm's name, address, opening date and the title **LC RFP - Consultant Services for Tower Site Construction Permitting**.

You may return the response in person at the Lane County Sheriff's Office, 125 E 8th St, Eugene, OR. LCSO is located on the 1st floor of the Lane County Courthouse Building. Leave response with the front counter staff.

f) Please email the electronic pdf document by the due date to: debby.haller@lanecountyor.gov, or you may include a CD of files with printed copies of response, instead of the emailed version. Please DO NOT send a ZIP file.

RFP Submission

DUE DATE: **11/9/2022 11:59pm, PST**

SUBMISSION LOCATION:

Lane County Sheriff's Office
Attn: Debby Haller
125 E 8th St
Eugene, OR, 97402

debby.haller@lanecountyor.gov

Key Dates

The key dates below are guidelines during the RFI process and are subject to change.

Date	Description
10/20/2022	RFI posted on Oregon Buys website
11/2/2022	Deadline to submit questions deadline
11/4/2022	County responds to questions deadline
11/9/2022	Responses due at 11:59 PM PST
11/16/2022	Decision made to proceed with RFP or retain current model at present

Overview

As part of an expansion of Lane Counties Communications System, Lane County Sheriff's Office will be installing new communications Towers and Buildings at various sites around Lane County. Each site will vary in scope, but in general there will be three new tower installations and three new building installations at pre-existing communications sites. Sites will either be modified or completely removed before new construction will begin.

Assistance is being sought to navigate and file all necessary documentation and permits with the County, State and Federal agencies that have oversight for communication facility construction.

There will be four sites that require permitting:

Site A – Old tower and building will be removed. New tower, building, generator, and fuel tank will be installed. Possibly the installation of a solar panel system, if space allows.

Site B – Old tower and building will be removed. New tower, outside equipment boxes, generator, fuel tank and fencing will be installed.

Site C – Tower installation on Federal Forest Service land next to pre-existing tower and building. Lane County does have authority over Federal Lands within its borders.

Site D – Old shelter and solar system to be removed. New building, generator, fuel tank and solar panels to be installed at the site.

RFP Response Section

A. Firm Information

Company Name:

Address of U.S. Headquarters:

Address of Service Office:

Service Office Phone Number:

RFP Contact Name/Title:

RFP Contact Email:

RFP Contact Phone:

B. Questions

What experience do you have in filling paperwork within Lane County for Tower site construction?

Are you familiar with Lane County Code for Tower site land use and permitting process?

How many years have you been providing these services?

Can you provide a cost range that these services might fall into?

How long does it take to file, on average, for tower site construction permit applications and land use approvals?

Can you fully meet the needs for filing for all land use, permitting and any other documents based on the needs of tower sites listed in the Overview section of this RFP?

Can you do business in Lane County Oregon?

CONSULTANT SERVICES FOR TOWER SITE CONSTRUCTION PERMITTING

This **Contract** is entered into by and between Lane County, a political subdivision of the State of Oregon (“**County**”), and Johnson Broderick Engineering, LLC, an Oregon limited liability company (“**Consultant**”), each a “**party**,” and referred to collectively in this Contract as “**the parties**.” County and Consultant agree as follows:

1. STATEMENT OF WORK (the “**Work**”)

- 1.1 Consultant will furnish or perform Consultant Services for various communication radio sites under County authority, in accordance with the requirements of this Contract.
- 1.2 Various communication sites consist of Indian Ridge, Badger Mountain, Mapleton, and Nebo Mountain (“**Sites**”).
- 1.3 The scope of Consultant's Work is further described in Exhibit A.
- 1.4 Consultant must perform the Work in a manner consistent with the offers and statements in Exhibit A.

2. CONTRACT DOCUMENTS

- 2.1 **The Contract.** The Contract consists of this Contract Form and the following listed exhibits, which are incorporated into the Contract as referenced here. There are no other Contract documents unless specifically referenced in this Contract.
- 2.2 **Exhibits.** With this document, the following Exhibits are incorporated into the Contract:
 - **Exhibit A** Scope of Work
 - **Exhibit B** Standard County Design Services (A/E) Contract Conditions
 - **Exhibit C** Insurance Coverages Required
- 2.3 **Precedence.** In the event of a conflict between the requirements of any documents listed in subsections 2.1 and 2.2 above, the conflict must be resolved in the following order of precedence: first, this Lane County Professional Services Contract Form, then in order: Exhibit C, Exhibit B, Exhibit A.

3. CONSIDERATION AND PAYMENT

- 3.1 **Consideration.** In consideration for Consultant's performance, County agrees to pay Consultant's fees in an amount not to exceed Two Hundred Forty Thousand Dollars (\$240,000.00). County is not obligated to pay any amount greater than that stated here.
- 3.2 **Payment.** Payment will be made periodically as the work progresses, not more than monthly, based upon a properly submitted and approved invoice from Consultant. Payments will customarily be made within 30 days. Prior to approval and payment, County may require, and if required Consultant must provide, any information which County deems necessary to verify work has been performed properly in accordance with the Contract.
- 3.3 **Invoices.** Invoices can be sent by mail or email to the following addresses:
Mail: Lane County Sheriff's Office, Fiscal **Email:** lcso_ap@lanecountyor.gov
125 E 8th Avenue
Eugene, OR 97401

4. EFFECTIVE DATE AND DURATION

- 4.1 **Effective Date.** Upon the signature of all parties, this Contract is effective December 1, 2022.
- 4.2 **Duration.** Unless extended or terminated earlier in accordance with its terms, this Contract will terminate upon completion and acceptance of Consultant's services, or by June 30, 2023, the end date of the funding source. However, such expiration shall not extinguish or prejudice either party's right to enforce this Contract with respect to any breach or default in performance which has not been cured.

- 5. AUTHORIZED REPRESENTATIVES AND NOTICE.** Each of the parties designates the following individuals as its authorized representative for administration of this Contract. Either party may designate a new authorized representative by written notice to the other.

5.1 County's Authorized Representative. 5.2 Consultant's Authorized representative.

Brian Greig, Communications Network
125 E 8th Avenue
Eugene, OR 97401
Phone: 541-682-8595
Email: brian.greig@lanecountyor.gov

Aaron Broderick, P.E. Principal
325 W 13th Avenue
Eugene, OR 97401
Phone: 541-338-9488
Email: aaron@jbe.us.com

Any notice, demand, consent, approval, or other communication to be given under this Contract must be in writing and provided by email addressed to the party's authorized representative, except as provided below in this section. However, if, in either party's discretion, email is not the most appropriate method for providing notice, then notice may be provided by personal delivery; certified mail, postage prepaid, return receipt requested; or nationally recognized overnight courier. The effective date of notice shall be: for notice by email, the date and time sent if sent between the hours of 8 am and 5 pm, otherwise effective at 8am the following Business Day; for notice delivered in person, the date and time of delivery; for notice by U.S. mail, three days after the date of certification; and for notice by overnight courier, the next business day after deposit with the courier. If no representative is identified in this section, notice may be given to the person executing the Contract on behalf of that party below.

- 6. MULTIPLE COUNTERPARTS.** The Contract and any subsequent amendments may be executed in several counterparts, facsimile or otherwise, all of which when taken together will constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract and any amendments so executed will constitute an original.

7. SPECIAL CONTRACT PROVISIONS.

7.1 Minimum Wage Rates. This Contract is not subject to Federal Executive Order 14026 requiring that workers working on or in connection with a Federal Government contract be paid an hourly minimum wage of \$15.00. All workers not subject to the Federal minimum wage must be paid not less than the Oregon minimum wage for their work location.

7.2 Compliance with Coronavirus Guidelines, Laws, Rules, and Orders. Each of the parties is aware of the COVID-19 emergency and agrees that it is and will remain familiar with the CDC prevention guidelines and with federal, state, and local laws, rules, and orders regarding COVID-19 throughout the term of this Contract, and will take all necessary precautions relating to COVID-19, including those set out in the guidelines, laws, rules, and orders described in this paragraph. The parties have anticipated the costs of compliance with the present guidelines, rules, laws, and orders prior to entering into this Contract, and that no claim will be made by either party for such compliance. However, in the event that after the effective date of this Contract the COVID-19 guidelines, laws, rules, and orders are changed in such a way as to adversely affect the parties' ability to carry out their obligations under this Contract, either party so affected must give notice to the other party of any potential need to modify the Contract to accommodate or respond to such changes in the guidelines, laws, rules, and orders.

SIGNATURES FOLLOW ON NEXT PAGE

SIGNATURES

CONSULTANT'S CERTIFICATIONS:

BY EXECUTION OF THIS CONTRACT, THE UNDERSIGNED CERTIFIES TO COUNTY THAT:

- The undersigned person has the power and authority to execute this Contract on behalf of Consultant, and to bind Consultant to its terms,
- Consultant will, at all times during the term of this Contract, be qualified and professionally competent, and possess any licenses required to perform the Work,
- Consultant has not discriminated against minority, women or small business enterprises or a business that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225, and
- The Consultant has, to the best of its knowledge, complied with Oregon tax laws in the period prior to the execution of this Contract, and will continue to comply with such laws during the entire term of this Contract, including:
 - (a) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318,
 - (b) Any tax provisions imposed by a political subdivision of this state that applied to Proposer or its property, goods, services, operations, receipts, income, performance of or compensation for any work performed, and
 - (c) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- Pursuant to ORS 305.385(6) and OAR 150-305-0302, the undersigned as Consultant hereby swears and affirms under penalty of perjury that, to best of my knowledge, Consultant is not in violation of any tax laws described in ORS 305.380 (4)(a).

EACH PARTY, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONSULTANT:

JOHNSON BRODERICK
ENGINEERING, LLC

By: _____

Print: _____

Title: _____

Date: _____

Address: _____

Tax ID: _____

COUNTY:

LANE COUNTY

By: _____

Clifton G. Harrold

Title: Sheriff_____

Date: _____

By: _____

Steve Mokrohisky

Title: Administrator_____ Date: _____

Lane County Sheriff's Office
125 E 8th Ave
Eugene, OR 97401

Exhibit A – Scope of Work

Consultant, Johnson Broderick Engineering, LLC, agrees to consult and provide permitting services associated with construction and upgrades to various Lane County radio communication sites, Indian Ridge, Badger Mountain, Mapleton, and Nebo Mountain (“**Sites**”). The scope of the Work includes, but is not limited to, the following:

1. Work with the Lane County Land Use Department and Permitting Office on behalf of Lane County Sheriff’s Office (“**LCSO**”) for needs at each site.
 - a. Consultant must navigate and file all necessary documentation and permits with the County, State and Federal agencies which have oversight for communications facility construction.
2. Pre-existing communication sites will either be modified or completely removed before new construction will begin. Site details include, but are not limited to:
 - a. Indian Ridge – New Tower, additional 500 gallon propane tank.
 - b. Badger Mountain – New Tower and Either rehab current building or place new building, new generator, new propane tank, electrical work to building.
 - c. Mapleton – New Tower and outside cabinets or small building, new propane tank, new generator, electrical hook up to building.
 - d. Nebo Mountain – New building, new solar plant, new generator, new propane tank.
3. Provide geotech surveys, if needed, at each Site.
4. Provide site surveys, if needed, at each Site.
5. Initial cost up to \$160k, and with permission from LCSO if needed, not to exceed \$240k.
6. Site visitations must be approved by County prior to travel, and may need to be accompanied by a County employee.

EXHIBIT B – STANDARD COUNTY DESIGN SERVICES (A/E) CONTRACT CONDITIONS

1. CONSULTANT'S STATUS

- 1.1 Independent Contractor.** The performance of this Contract is at Consultant's sole risk. The service or services to be rendered under this Contract are those of an independent contractor that is not an officer, employee or agent of the County as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or the provisions of any other contract, Consultant is acting as and assumes liability of an independent contractor as to any claims between County and Consultant. Consultant is solely liable for any workers' compensation coverage; social security, unemployment insurance or retirement payments; and federal or state taxes due as a result of payments under this Contract, whether due on account of Consultant or Consultant's subcontractor, if any.
- 1.2 Consultant Not Employee.** Consultant is not currently employed by County and will not be under County's direct control, and will not be eligible for any Federal Social Security, State Workers' Compensation, unemployment insurance or Public Employees Retirement System benefits from this Contract.

2. INSURANCE AND INDEMNIFICATION

- 2.1 Consultant's Required Insurance.** Consultant must provide and maintain all insurance called for on the Exhibit entitled "Insurance Coverages Required" to be provided by the Consultant, and must notify Lane County Risk Management of any material reduction or exhaustion of aggregate limits. Consultant may not commence any work until Consultant furnishes evidence of all required insurance specified by the County, and has obtained the County's approval as to limits, form, and amount. Commercial General Liability and Auto Liability coverage must include an Additional Insured Endorsement naming the County and its officers, agents, and employees that includes completed operations, and which is primary and non-contributory with any other insurance and self-insurance.
- 2.1.1 Limitation on Tail Coverage for Professional Liability.** Notwithstanding the provisions of Exhibit C, County waives the requirement for tail coverage on professional liability insurance policies related to the design services.
- 2.2 Consultant to Maintain Insurance.** Consultant may not cancel, materially change, or not renew insurance coverages. If any policy is canceled before final payment by County to Consultant, Consultant must immediately procure other insurance meeting the requirements. Any insurance bearing on adequacy of performance must be maintained after completion of the Contract. If Consultant fails to maintain any required insurance, County reserves the right to procure such insurance and to charge the cost to Consultant.
- 2.3 Workers' Compensation.** Consultant, its subconsultants, subcontractors, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law, and must comply with ORS 656.017 and provide Workers' Compensation coverage for all their subject workers unless exempt under ORS 656.126.
- 2.4 No Limitation.** Nothing contained in these insurance requirements limits the extent of Consultant's responsibility for payment of damages resulting from Consultant's operation under this Contract.
- 2.5 Consultant's Indemnification.** Except as provided in subsection 2.6 below, to the fullest extent permitted by law, and to the extent otherwise provided for in private contracts of insurance, Consultant shall indemnify, defend, and hold harmless the County and its officers, agents, and employees from all damages, losses, expenses, attorney fees and costs related to litigation, including judgments arising out of or resulting from Consultant's performance of or failure to perform under this Contract.
- 2.5.1 Owner Defense Requirements.** Notwithstanding the foregoing defense obligations, neither Consultant nor any attorney engaged by Consultant shall defend any claim in the name of County, nor purport to act as legal representative of County or any of its agencies, without the prior written consent of County. County may assume its own

defense and settlement of any claims, and reserves all rights to pursue any claims it may have against Consultant.

2.5.2 Owner's Actions. This Section 2.5 does not include indemnification by Consultant of County for County's acts or omissions, whether related to the Contract or otherwise.

2.5.3 Intellectual Property, Defense. This indemnification shall extend to the work product or any tangible or intangible items delivered to County under the Contract that may be the subject of protection under any state or federal intellectual property law or doctrine, including any claim that the County's use thereof infringes any patent, copyright, trade secret, trade mark, or other proprietary right of any third party. Consultant shall have no affirmative duty to defend any party for claims for professional liability.

2.6 Consultant's Indemnification for Claims for Professional Liability. Notwithstanding the foregoing subsection 2.5, to the fullest extent permitted by law, and to the extent provided for in private contracts of insurance, Consultant shall indemnify, save, and hold harmless County and its officers, agents, and employees, from all claims, suits, or actions arising out of the professionally negligent acts or omissions of the Consultant or its subconsultants, subcontractors, agents, or employees in performance of professional services under this Contract.

2.6.1 Notwithstanding any contrary provision herein, it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the indemnitees shall only apply if and when and to the extent that a court or other forum of competent jurisdiction has determined the percentage of Consultant's fault for the liability alleged in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

2.6.2 Notwithstanding any contrary provision herein, it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the indemnitees shall only apply if and when and to the extent that a court or other forum of competent jurisdiction has determined the percentage of Consultant's fault for the liability alleged in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

3. CONSULTANT'S OBLIGATIONS

- 3.1** Consultant must possess the learning, skills, and experience ordinarily possessed by similar professionals in the community, and use reasonable care and diligence and professional judgment in carrying out the work of this Contract. Nothing in this Contract shall be interpreted to require Consultant to meet any higher standard and this paragraph shall control over any such contrary provision.
- 3.2** Consultant must make all provisions of the Contract applicable to any subconsultant or subcontractor performing work under the Contract.
- 3.3** Consultant agrees that County will not be responsible for any losses or unanticipated costs suffered by Consultant as a result of the Consultant's failure to obtain full information in advance in regard to all conditions pertaining to the work.
- 3.4** Consultant certifies that Consultant has all necessary licenses, permits, or certificates of registration necessary to perform the Contract and further certifies that all subcontractors and subconsultants will likewise have all necessary licenses, permits or certificates before performing any work. The failure of Consultant to have or maintain such licenses, permits, or certificates is grounds for or immediate termination of the Contract.
- 3.5** Consultant may not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished, shall assume responsibility for satisfaction of any lien so filed or prosecuted and shall defend against, indemnify and hold the County harmless from any such lien or claim.
- 3.6** Unless otherwise provided by the Contract or law, Consultant agrees that County and its duly authorized representatives may have access to the books, documents, papers, and records of Consultant which are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts, copies and transcripts. Consultant shall retain and keep accessible such books, documents, papers, and records for a minimum of 6

years after County makes final payment on the Contract. Copies of applicable records must be made available upon request, and payment of copy costs is reimbursable by County.

- 3.7 Consultant must, in the course of carrying out Consultant's Work, comply at all times with the then-current "Mandatory County Policies for Vendors" published on County's Procurement and Purchasing webpage at: www.lanecountyor.gov/bids.

4. CONSULTANT'S OBLIGATIONS REQUIRED BY LAW

- 4.1 Consultant must promptly make payments for labor and material, and pay all contributions due to the Industrial Accident Fund, in accordance with ORS 279B.220 or ORS 279C.505, as applicable.
- 4.2 Consultant must promptly make payments for any costs described in ORS 279B.230 and 279C.530, as applicable.
- 4.3 Consultant must comply with requirements related to employed persons' hours of work and payment for overtime work, in accordance with ORS 279B.235, 279C.520, and 279C.540, as applicable.
- 4.4 If Consultant is a nonresident bidder and the Contract price exceeds \$10,000, Consultant must promptly report to the Department of Revenue on forms provided by that Department the total contract price, terms of payment, length of contract and such other information as the Department may require before the County will make final payment on the contract, in accordance with ORS 279A.120.
- 4.5 Consultant and any subcontractor must pay to the Department of Revenue all sums withheld from employees, in accordance with ORS 316.167.
- 4.6 Consultant acknowledges that, pursuant to ORS 210.190, no payment may be made by County on account of this Contract if Consultant is indebted to Lane County in any manner, except for taxes not delinquent. Consultant expressly grants County the right to deduct from any payments due on this Contract the amount necessary to satisfy such indebtedness until any such debt has been satisfied.
- 4.7 **Equal Employment Opportunity.** During the performance of this Contract, Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Consultant will comply with all applicable requirements of 29 CFR Part 471, Appendix A to Subpart A (copy available at: www.dol.gov/olms/regs/compliance/EO13496.htm), and will include the terms of these requirements in all subcontracts entered into under this Contract.
- 4.8 **Oregon False Claims Act.** Consultant acknowledges that the Oregon False Claims Act (ORS 180.750 to 180.785) applies to any action or conduct by Consultant pertaining to this Contract that constitutes a "claim" as defined by the Act. By its execution of this Contract, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made may make, or causes to be made that pertains to this Contract or to the Work of the Contract.
- 4.9 **Compliance with Law.** In connection with its activities under this Agreement, Consultant must comply with all applicable federal, state and local law, including all applicable provisions of the Americans with Disabilities Act of 1990, 42 USC Section 12101 et seq. and Section 504 of the Rehabilitation Act of 1973.

5. MODIFICATION AND TERMINATION

- 5.1 **Modification.** No modification or amendment to this Contract will bind either party unless in writing and signed by both parties. In lieu of termination pursuant to subsection 5.2.4 below, County may propose modifications to the Contract sufficient to allow County to perform its obligations.
- 5.2 **Termination:**
- 5.2.1 The parties may jointly agree to terminate this Contract at any time by written agreement.

5.2.2 County may terminate this Contract for its convenience at any time with no liability on its part, except to pay for services previously provided, by giving Contractor not less than 30 days' advance written notice.

5.2.3 If County reasonably believes that Consultant is in material breach of Consultant's obligations or any representation or warranty contained in this Contract, County may suspend the Work of this Contract at any time without notice. Upon notice to Consultant of such breach, and failure of Consultant to cure such breach within 7 days of receipt of County's notice, County may terminate this Contract.

5.2.4 County certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract for the period within the current budget. However, Consultant understands and agrees that: (1) if County fails to appropriate funds for any successive budget year, the Contract will terminate at the end of the last fiscal year for which payments have been appropriated, and (2) if County's funding, appropriations, or expenditure authority are reduced to a level insufficient, in County's reasonable administrative discretion, to perform its obligations under this Contract, County may terminate this Contract immediately upon notice to Consultant.

5.2.5 Upon termination pursuant to this subsection, County will have no further obligation to Consultant except for payments for amounts earned prior to the termination date.

5.3 Remedies and Default. County may exercise any of the following remedies for Consultant's failure to perform the scope of work or failure to meet established performance standards: reduce or withhold payment; require Consultant to perform, at Consultant's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or declare a default, terminating the Contract and seeking damages and other relief available under the terms of the Contract or applicable law.

5.4 Force Majeure. Neither County nor Consultant will be held responsible for delay or default due to force majeure acts, events, or occurrences, including but not limited to fires, riots, wars, and epidemics, unless such delay or default could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. If delays or nonperformance are caused by a subcontractor of Consultant, Consultant will be liable for such supplies or services if the supplies or services were obtainable from other sources in sufficient time to permit Consultant to meet the required schedule. County may terminate this Contract upon written notice after determining that a delay or default caused by Force Majeure acts, events, or occurrences will reasonably prevent successful performance of the Contract.

6. DISPUTES

6.1 Dispute Resolution. The parties are required to exert every effort to cooperatively resolve any disagreements that may arise under this Contract. This may be done at any management level, including at a level higher than the persons directly responsible for administration of the Contract. In the event that the parties alone are unable to resolve any conflict under this Contract, they are encouraged to resolve their differences through mediation or other cooperative dispute resolution process.

6.2 Choice of Law, Venue, and Jurisdiction. All matters in dispute between the parties to this Contract arising from or relating to the Contract, including without limitation alleged tort or violation, are governed by, construed, and enforced in accordance with the laws of the State of Oregon without regard to principles of conflict of laws. All disputes and litigation arising out of this Contract will be decided by the state or federal courts of Oregon, CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Venue for all disputes and litigation will be in Lane County, Oregon. This section does not constitute a waiver by County of any form of defense or immunity, whether governmental immunity or otherwise, from any claim or from the jurisdiction of any court.

- 6.3 Attorney Fees.** In the event an action, suit or proceeding, including appeals, is brought for failure to observe any of the terms of this Contract, each party shall be responsible for that party's own attorney fees, expenses, costs and disbursements for the action, suit, proceeding or appeal.

7. MISCELLANEOUS PROVISIONS

- 7.1 Public Records.** The parties acknowledge that this Contract and all records held by County are public records and subject to public disclosure unless a statutory exemption applies, and agrees that County shall have no liability for the disclosure of any confidential information in response to a public records request where such disclosure is required by court or district attorney order, or by County's good faith interpretation of its statutory requirements.
- 7.2 Merger and Construction.** This Contract contains the entire agreement of County and Consultant with respect to the subject matter of this Contract, and supersedes all prior negotiations, agreements and understandings. This Contract is the result of an open procurement process and negotiations between the parties, and the provisions of this Contract are to be interpreted and their legal effects determined as a whole, with no part to be construed against the drafter of such part.
- 7.3 Waiver.** Failure of County to enforce any provision of this Contract does not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce that or any other provision of this Contract.
- 7.4 Severability.** If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions are not affected; and the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- 7.5 Survival.** The provisions of this Contract with respect to governing law, indemnity, insurance for completed products and operations, warranties, guarantees and, if included in the Contract, attorney fee provisions and limitations, will survive termination or completion of the Contract.
- 7.6 Time is of the Essence.** The parties agree that time is of the essence with respect to all provisions of this Contract.
- 7.7 Non-Assignment.** Consultant may not assign or transfer its interest in this Contract without prior written approval of County.
- 7.8 Binding on Successors and Assigns.** The provisions of this Contract are binding upon and inure to the benefit of the parties to this Contract, their respective successors, and permitted assigns.
- 7.9 No Third-Party Beneficiaries.** County and Consultant are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or may be construed to give or provide any benefit or right to third persons, either directly or indirectly, that is greater than the rights and benefits enjoyed by the general public, unless that party is identified by name in this Contract.
- 7.10 Headings.** The headings and captions in this Contract are for reference and identification purposes only and may not be used to construe the meaning or to interpret the Contract.