



Requests for Proposals
Rural Broadband Consultant Services for
Yamhill County, Oregon

434 NE Evans Street
McMinnville, OR 97128
503-434-7501

SECTION 1 – Background

Yamhill County is located in the Willamette Valley of Oregon. The County seat is McMinnville, about 35 miles southwest of Portland. The County has a population of approximately 109,000 residents. Yamhill County is a general law county with three elected Commissioners and 5 elected department heads. The remainder of the County falls under the supervision of the appointed County Administrator. Yamhill County employs approximately 700 employees and provides a myriad of services, including but not limited to, public health, adult, youth and family behavioral health services, roads, bridges, parks, fairgrounds, law enforcement, juvenile and adult corrections facilities.

Yamhill County, Oregon is committed to ensuring that the County continues to prosper and evolve as the global economy shifts and the need for ultra-high-speed broadband access grows. In the fall of 2021, the County completed a Request for Information (RFI), which sought information from area broadband providers to determine the interest of private entities to collaborate with the County to address the lack of broadband infrastructure in the rural parts of Yamhill County. The County received four responses and based on these responses; it was determined that the County needed additional consultant services to help support the effort to improve rural broadband access.

The County therefore issues this Request for Proposal (RFP) to seek proposals from qualified consulting firms to develop a strategic broadband plan that facilitates partnerships with providers to improve and extend broadband access and connectivity to rural areas of the county, and to develop a grant program to support implementation of the plan. The purpose of this effort is to provide the County with the information needed to analyze, select, prioritize, and implement the best solutions to improve rural broadband access and connectivity across all rural areas of the county. The County is not interested in creating a utility or becoming a service provider. To support the best solutions to improve rural broadband connectivity and access, the County has prioritized developing a grant program that will make use of American Rescue Plan Act (ARPA) funds for the construction and expansion of broadband to better serve county residents, businesses, and agencies.

SECTION 2 – Overview

2.01. Overview

The successful proposer that is awarded a contract will provide the County with a plan that contains the information needed to analyze, select, and implement the best solutions to improve rural broadband access and connectivity across the entire County. Elements of the plan may include, but are not limited to:

- Identifying residences or areas within the county that lack affordable, high-speed internet access.
- Gathering input from underserved residents to determine demand and price sensitivity.
- Identification of all current and potential internet services providers.

- Analysis of relevant laws and ordinances
- Defining standards for “affordable” and “high-speed”.
- Analysis of existing public and private broadband facilities within the county.
- Identifying challenges to, and opportunities for, broadband facility expansion.
- Exploring the potential for public/private partnership.
- Identifying specific funding sources, including government grants, to help expand broadband facilities.

The County’s preferred technology is fiber-to-the-premises (FTTP). The County understands, however, that the geography and population density of some parts of the County may require creative options for greater broadband deployment. As such, the County is open to considering hybrid fiber/wireless solutions and last-mile wireless solutions. Another possibility is the extension of hybrid fiber-coaxial service from adjacent areas, so long as the resulting network provides the necessary level of service.

The successful proposer that is awarded a contract will also assist in developing a grant program for existing or new providers that will make use of American Rescue Plan Act (ARPA) funds for the construction and expansion of broadband to serve rural county residents, businesses, and agencies. The County has already identified a share of the County’s direct allocation of ARPA funds to support such a grant program and will be receiving additional funds from the State of Oregon. Any grant program using ARPA funds must comply with United States Treasury guidance regarding the use of ARPA funds. As part of grant program, the consultant will assist with the following:

- Developing a recommendation and process of soliciting, reviewing, ranking, and awarding grants. Key elements of grant program will include:
 - ARPA qualified project
 - Service to unserved and underserved areas
 - Preference for reliability
 - Preference for affordability
 - Preference for customer service
 - Preference for wireline fiber
 - Preference for equity participation by provider

- Preference for leverage of other funds
- Facilitate and provide recommendation for convening a grant review committee, comprised of industry experts and community members to review, score, and prepare grant award recommendations.
- Assist the County with providing oversight of grant awards and project progress.

Consultant may include optional scope of work items that you believe would be beneficial and support the county's goals. County will assist the successful consultant and provide additional information to successfully execute the outlined information in the RFP.

NOTE: The consultant's scope of work must meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.

SECTION 3 – Deliverables

3.01. Meetings

- Plan
 - Two (2) meetings with stakeholders to identify objectives and criteria of Project and plans.
 - Two (2) meetings with staff to review initial findings and analysis.
 - Two (2) presentations to management/and or governing body to provide findings.
- Grant Program
 - One (1) grant review committee meeting.
 - One (1) presentation to governing body to provide grant award recommendations.

3.02. Material

Develop final plan using the results of the broadband assessment study for expanding access and connectivity to broadband services throughout rural areas of the County. The report must conclude the analysis by identifying a recommended strategy and associated action plan for its implementation. The final written report shall at least include your recommendations on the following items:

- Executive Summary
- County demographics
- Results from surveys and other public participation efforts

- Incumbent providers, their location(s) and details on current service and technologies
- Industry findings
- Similar projects
- Potential Project partners
- Legal and regulatory issues
- Preliminary design modeling to achieve connectivity and redundancy affordability
- Business and financial modeling in support of network build to include Fiber to the Premises (FTTP), Fixed Wireless Broadband, or a Hybrid System
- Estimation of Project cost and timeline
- Final list of recommendations and suggested implementation measures to be employed by County, together with a summary of data collected and relied upon for recommendation

Develop County grant program using the results of the broadband plan that will make use of American Rescue Plan Act (ARPA) funds for the construction and expansion of broadband to serve rural county residents, businesses, and agencies. The grant program is to include the following elements:

- Executive Summary
- Proposed grant structure and timeline to be approved by County
- Eligibility criteria
- Project evaluation criteria and scoring
- Outreach plan
- Application process and review
- Selection committee process to provide recommendation to County

Grants will be awarded on a competitive basis and scored and evaluated by a committee approved by the Yamhill County Board of Commissioners (the “Board”). Number and size of grant awards are subject to funds being available. Administration of the grant program will also involve County grants management staff, County Counsel’s Office, and County Administration. All aspects of the grant program are subject to approval of the Board. All grant awards shall comply with ARPA, and terms and conditions provided in grant agreements.

SECTION 4 – Schedule and General Information Regarding Submission of Proposals

A copy of the “Requests for Proposals for Rural Broadband Consultant Services” will be available at no charge from the Yamhill County Board of Commissioners, 434 NE Evans Street, McMinnville, Oregon 97128, telephone (503) 434-7501.

4.01 Schedules in 2022

Date of Request: March 31, 2022 (Repost – Originally Released February 7, 2022)
Questions due by: April 18, 2022
Proposals due: May 2, 2022

Proposals due: 3 p.m. local time, Monday, May 2, 2022, in Yamhill County Board of Commissioners Office, 434 NE Evans Street in McMinnville, Oregon 97128.

Qualified proposers must submit 5 copies of their proposal labeled “PROPOSAL Rural Broadband Consultant Services” and shall submit them to the Board at the Yamhill County Board of Commissioners Office. The proposals must be physically received by 3:00 p.m. local time, May 2, 2022, at the Yamhill County Commissioners Office at 434 NE Evans Street in McMinnville, Oregon 97128. Proposals will be opened at the Yamhill County Commissioners Office at 434 NE Evans Street in McMinnville, Oregon 97128.

All proposals shall be submitted in a sealed envelope, clearly marked on outside:

“PROPOSAL Rural Broadband Consultant Services.”

If mailed, address to: Yamhill County Board of Commissioners
ATTN: Kenneth Huffer, County Administrator
535 NE 5th Street
McMinnville, Oregon, 97128

A proposer submitting a proposal certifies that no officer, agent, or employee of Yamhill County has a pecuniary interest in the proposal; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other proposer; the proposer is competing solely in its own behalf without connection with or obligation to any undisclosed person or firm.

By submitting their proposal, proposer acknowledges and agrees that if their proposal is selected then it shall be considered valid for a period of not less than sixty (60) days from the date of selection.

Each proposer shall state whether it is a “Resident Proposer” of the State of Oregon. “Resident Proposer” means a proposer that has paid unemployment taxes or income taxes in Oregon during the twelve (12) calendar months immediately preceding submission of the proposal, has a business address in Oregon, and has stated in its proposal that it is a Resident Respondent.

4.02 Questions Regarding RFP

All written communications pertaining to this RFP should be directed by mail to Kenneth Huffer, County Administrator, 535 NE 5th Street, McMinnville, Oregon, 97128; by email to hufferk@co.yamhill.or.us; or by fax to (503) 434-7553 so that they are received no later than 5:00 pm on April 18, 2022. If a question is determined appropriate by Administrator Huffer, it will be answered by written addenda and posted on the county website. Respondents shall not rely on verbal or written representations regarding this RFP except for written addenda issued by Yamhill County.

4.03 Contents of Proposals

Qualified proposers are urged to fully examine the RFP and to familiarize themselves with all matters pertaining to the scope of services. Proposals shall be prepared to fully describe the qualified proposer's means and methods to meet scope of services. The County desires that the information in the proposal provides the requested information in a clear and concise format. Submission of supplemental materials other than those specifically requested by the RFP is at the discretion of the qualified proposer. Each proposal shall include complete responses to information requested in this RFP. Proposals shall include all items listed below and as specifically provided elsewhere herein.

4.04 Letter of Transmittal (Introduction)

The proposals shall include an introductory letter expressing interest in the Project. The letter should include name of firm, RFP contract person, email address, mailing address, telephone number, and must be signed by the person authorized to bind the firm.

4.05 Project Description and Approach

Provide a statement of the services to be provided including a detailed explanation of how the services are to be provided.

Indicate the expected involvement of County staff.

A Project schedule should be included in this section. It is anticipated that the broadband strategic plan development will take between 8– 12 weeks to complete and the development of a grant program will take 6–8 weeks to complete.

4.06 Experience and Quality of Service

Provide project descriptions for up to three recent projects similar in nature and size to the proposed Project, including type of entity, start and completion dates, measures that indicate quality and successful project completion, and a client reference name and phone number. Indicate the involvement of the firm and key staff. Provide any background information on the size, capability and location of the firm that may be beneficial.

4.07 Proposed Cost of Services

Provide a cost proposal to perform the scope of work. Clearly describe any deviation from the listed scope of work that would significantly affect costs. Separate the cost of any proposed

optional services from the cost of services requested. The format for the cost proposal is to be selected by the proposer.

4.08 Sample Deliverables

Provide samples of project and communication plans and project status reports created for referenced projects.

4.9 Insurance Requirements

Identify the professional liability coverage that the proposer carries. Minimum insurance requirements are set out in the sample contract attached to this RFP as Attachment A, which is incorporated herein by this reference.

SECTION 5 – Proposal Evaluation and Scoring

The evaluation will be based on the technical and administrative capabilities in relation to the needs of the project. The criteria listed below will be used to evaluate the proposers and proposals.

5.01 Letter of Transmittal (Pass/Fail)

5.02 Project Description and Approach (25 points)

- Proposer's Project understanding and approach to accomplish the Project's objectives and tasks.
- Methodologies proposed to accomplish the Project, including the types of information or data required.
- Proposed schedule for compliance with stated anticipated timeframe and/or suggested schedule enhancements or deviations.

5.03 Proximity to and Familiarity with Project (25 Points)

- Proposer's geographic proximity to and familiarity with the physical location of the Project.

5.04 Experience and Quality of Service (25 Points)

- Proposer's recent projects experience, specifically for this type of work, level of complexity, and comparable size with the Project.
- Quality of the proposer's service on referenced projects and the success of the firm on the referenced projects.

5.05 Proposed Cost of Services (25 Points)

- Accomplishment of the stated objectives and tasks for the best value will receive the highest points for this criterion.

SECTION 6 – Evaluation Process and Selection Criteria

6.01 General

Yamhill County will appoint a committee to evaluate the proposals received in response to this RFP. The evaluation committee will be comprised of Yamhill County staff. The evaluation committee will evaluate and rank proposals in accordance with the evaluation criteria set forth herein. Proposals submitted that do not meet the requirements of this RFP will not be evaluated and will be returned to the respective proposer. Yamhill County reserves the right to (i) reject any and all proposals if it determines rejection of the proposals is in the best interest of the County and (ii) waive any and all minor informalities.

6.02 Evaluation Process

- A. The evaluation criteria which will be applied by the evaluation committee are set forth in this subsection and subsection 5. The sum of the points awarded to each proposal will determine the ranking of proposals.
- B. Each member of the evaluation committee will review the proposals from each responsive qualified proposer and complete a scoring sheet that will use the scoring method described in Section 5 and below. Each criterion will have a maximum score and the evaluation committee members will be instructed to score each proposal on the information provided in the proposal and not as a comparison to other proposals. All scores for each separate proposer will be added together and divided by the number of evaluation committee members to determine the average evaluation score for that proposal. The highest scoring proposal will be recommended by the evaluation committee to the Board. Records of scoring methodology and scoring sheets shall be retained in the RFP file.
- C. The highest scoring proposer as recommended by the evaluation committee to the Board will be invited to enter contract negotiations with Yamhill County. If contract negotiations do not result in a contract acceptable to both parties, Yamhill County will invite the second ranked proposer to enter contract negotiations. If negotiations are not successful, Yamhill County will negotiate with the 3rd, etc. until negotiations are successful with a proposer, or the solicitation is canceled.

SECTION 7 – Protests

7.01 A protest must be submitted in writing to the Board and shall state the basis for the protest and the course of action that the protesting party desires the Board take. A protest based upon restrictive specifications or other provisions of the RFP must be received by the Board not later than seven (7) business days prior to the date set for receipt of proposals. A protest based upon any other grounds must be received by the Board not later than five (5) business days after the date the Board provides notice of highest scoring proposer, or within five (5) business days after

the time the protesting party first became aware of, or reasonably should have become aware of the notice, whichever is sooner.

7.02 If the protest does not meet these requirements, the Board may, at the Board's option, reject the protest or allow the protesting party a reasonable time to correct the deficiencies in the protest documentation. Yamhill County shall not be obligated to postpone a contract award in order to allow a proposer to correct a deficient protest, unless otherwise required by law. Upon receipt of a properly submitted protest, the Board shall review the protest and provide a written decision to the protesting party.

7.03 Yamhill County shall not be obligated to postpone selection of a proposer pending resolution of a protest, unless otherwise required by law.

SECTION 8 – Rejection of RFP Proposals

8.01 Rejection; Investigation

Yamhill County reserves the right to reject any and all proposals if it determines rejection of the proposals is in the best interest of the County. In addition, Yamhill County may conduct its own independent evaluation of persons or entities listed in a proposal to verify that the proposer is qualified to provide services for this project. A proposer shall provide all requested information as requested by the County to verify that it can complete this project. Failure to provide the requested information shall be grounds for disqualification.

Although price is a consideration in determining the apparent successful proposer, the intent of the RFP is to identify a proposal from a proposer that has a level of specialized skill, knowledge and resources to perform the work described in the RFP. Qualifications, performance history, expertise, knowledge and the ability to exercise sound professional judgment are primary considerations in the selection process. Due to the highly technical nature of some of these tasks, the proposer with the highest price proposal may not necessarily be awarded a contract. County reserves the sole right to determine the best proposal.

8.02 Examples of Grounds for Rejection

The following listed grounds are examples of grounds for which the County may elect to reject a proposal. The list is not exclusive:

- The proposal is conditioned in whole or in part upon the addition, revision, or deletion of any requirement or provision in any part of the RFP.
- The proposal does not include the minimum requested information.
- The proposer does not have the necessary experience or references.
- The proposer does not have key personnel available of sufficient experience to perform the Project.

- The proposer has breached contractual obligations to public or private contracting agencies.

8.03 Public Record

All proposals are public information after the proposals have been opened, and all protests are public information after the protest period ends. The opened proposals shall be available for public inspection (ORS 192.420 to 192.505) except to the extent the proposer designates trade secrets or other proprietary data to be confidential (ORS 192.501(2)).

SECTION 9 – Cancellation

9.01 Yamhill County reserves the right to decline to select a proposer if the County deems it in its best interest to do so. Yamhill County may cancel this RFP or reject any or all proposals in accordance with ORS 279B.100. In no event shall Yamhill County have any liability for refusal to select a proposer. The proposer assumes the sole risk and responsibility for all expenses connected with the preparation and submission of their proposal.

SECTION 10 – Minimum Contract Requirements

10.01 Indemnification

Proposers shall indemnify and hold harmless Yamhill County and each of its officers, agents, and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the subject work and created by any act or error of a vendor, subcontractor or anyone directly or indirectly employed by the proposer; provided, however, that nothing herewith shall be constructed to require indemnification of Yamhill County for liability attributable to the County's sole negligence.

10.02 Non-Discrimination

All proposers will recruit, select, train, promote, transfer, and release its personnel, as contemplated here under, without regard to any protected class, e.g. race, color, religion, national origin, disability, age or sex (except where the class is a bona fide occupational qualification). Further, proposers will administer its other personnel policies such as compensation, benefits, layoff, returns from layoff, company sponsored training, education, and tuition assistance without regard to any protected class.

By submitting a proposal hereunder, proposer certifies that they have not discriminated and will not discriminate, in violation of ORS 279A.110(1), against a disadvantaged business enterprise, a minority owned business, a woman-owned business, a business a service-disabled veteran owns or an emerging small business awarding a subcontract.

10.03 Compliance with Tax Laws.

By submitting a proposal, proposer certifies compliance with the tax laws of the State of Oregon or a political subdivision of the state, including ORS 305.620 and ORS Chapters 316, 317 and 318.

SECTION 11 – Contract

11.01 In addition to the contractual requirements detailed in Section 10, the remaining contract terms and conditions shall be negotiated with the successful proposer once they have been selected and contract negotiations are underway. Final contract language will be determined by negotiation and mutual consent. A sample form of contract, subject to final negotiations, is included as ATTACHMENT A to this RFP.

(END OF RFP)

ATTACHMENT A
AGREEMENT FOR
Rural Broadband Consultant Services
(Yamhill County and _____)

THIS AGREEMENT (“Agreement”), is made between **Yamhill County**, a political subdivision of the State of Oregon ("County") and _____("Contractor")

RECITALS:

A. County, through its Board of Commissioners, has determined the need for Broadband Consultant Service to develop a broadband strategic plan and grant program to improve and extend broadband access in the county and that it is necessary for County to contract with a qualified consultant with training and expertise in providing such services (the “Project”).

B. County has budgeted funds to perform the Project. County conducted a competitive process to select the most qualified consultant to provide the services described herein.

C. Contractor was the most qualified proposer and is qualified to provide the required professional facilities assessment services and to perform the other related duties required by County and imposed by this Agreement. County and Contractor desire to enter into this Agreement and County is authorized to enter into this Agreement under ORS 203.010(3). NOW, THEREFORE

AGREEMENT:

In exchange for the promises and other consideration as set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **Services of Contractor.** Contractor agrees to perform the following services (the “Services”), in accordance with and as detailed in County’s request for proposals and Contractor’s response in the form of a “PROPOSAL Rural Broadband Consulting Services”, dated _____ which are contained in Exhibit A, which is attached hereto and incorporated herein by this reference. Any additional work beyond the Services may be negotiated individually at Contractor’s hourly rate or at a negotiated project rate.
2. **County’s Duties.** If any Services are provided at County offices, County shall provide the office space, terminals, telephone, office equipment, office furniture, computer hardware and software, and fixtures necessary to perform Services.
3. **Independent Contractor.** Contractor is engaged hereby as an independent contractor, and will be so deemed for purposes of the following:
 - a. Contractor will be solely responsible for payment of any federal or state taxes required as a result of this Agreement. County will not withhold any state or federal income taxes from payments owed Contractor.

b. As an independent contractor, Contractor acknowledges and agrees that Contractor is not entitled to any benefits granted to County employees. Without limitation, but by way of illustration, the benefits which are not granted to Contractor include vacation, holiday and sick leave, other leaves with pay, tenure, medical, and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits, except as otherwise required by law.

c. Contractor is an independent contractor for purposes of the Oregon Workers' Compensation law (ORS Chapter 656) and is solely liable for any Workers' Compensation coverage under this Agreement. If Contractor has the assistance of other persons in the performance of this Agreement, Contractor will qualify and remain qualified for the term of this Agreement as a carrier-insured employer or a self-insured employer under ORS 656.403 et. seq.

4. Compensation; Payment Schedule. Unless previously terminated in accordance with Section 8, Contractor will provide the Services for a total fee of \$_____, inclusive of reimbursable expenses. Contractor shall be compensated in the amount of the total fee for Services rendered under this Agreement, which amount shall also be the maximum not-to-exceed amount to be paid under this Agreement unless this Agreement is amended or extended in a writing signed by both parties. The above rates are inclusive of any per diem rates described on Exhibit A. Any expenses incurred by Contractor in the performance of the Services under the terms and conditions of this Agreement not specifically provided for herein shall be the sole and separate responsibility of Contractor, unless preapproved in writing by County. The only compensation due Contractor is specifically stated in this Agreement. Upon request of County, but in no event less frequently than monthly, Contractor will provide written documentation of completed and ongoing tasks, hours, and deliverables. Contractor shall submit monthly invoices by 25th of the month and, following receipt, review, and approval of such invoices (in its sole discretion), County will issue monthly checks on approximately the 1st or 15th of each month or on the dates that best coincide with the County's standard billing cycle.

5. INDEMNIFICATION. CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS COUNTY AND EACH OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM CONTRACTOR'S PERFORMANCE OF THE SUBJECT WORK AND SERVICES UNDER THIS AGREEMENT OR CREATED BY ANY ACT OR ERROR OF A VENDOR, SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR; PROVIDED HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE INDEMNIFICATION OF YAMHILL COUNTY FOR LIABILITY ATTRIBUTABLE TO YAMHILL COUNTY'S SOLE NEGLIGENCE.

6. Insurance. Contractor, at Contractor's own expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this Agreement plus two years):

- a. Workers' Compensation Insurance in compliance with statutory requirements;
- b. Commercial General Liability Insurance (including contractual liability and completed operations coverage, and coverage for liability resulting from hazardous substances), on an occurrence basis, with not less than \$2,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$3,000,000;

c. Professional Liability Insurance, including Errors and Omissions coverage, with a per claims made and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to the Project work or services provided under the Agreement. This coverage must remain in place during the duration of this contract and shall remain continuous, if cancelled and extended reporting period must be purchased for up to three years.

d. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Contractor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Contractor in connection with the Services.

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to County. At County's request, Contractor shall furnish County with certificates of insurance for each of the required insurance coverages. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to County.

The Commercial General Liability and Commercial Automobile Liability shall (i) name County, its directors, officers, and employees, as additional insureds, (ii) provide that it is primary insurance with respect to the interests of County and that any insurance maintained by County is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause.

7. Private Business. Contractor shall not operate any private business from any County property, nor shall Contractor utilize any County property for Contractor's private business, except to perform the Services described in this Agreement, however, phone calls received or made by Contractor using County equipment and while on County property shall be allowed only on an emergency, occasional basis. If a long distance telephone call is made on an emergency, occasional basis, it shall be charged to Contractor's private business telephone number or credit card.

8. Term; Termination; Default.

a. Term. Unless terminated in accordance with subsection (2), the term of this Agreement is from _____ through _____ and supersedes any prior agreements between the parties. Upon mutual written agreement of the parties this Agreement may be extended for up to two (2) additional one-year terms.

b. Termination. Either party may terminate this Agreement on thirty (30) calendar days written notice to the other party. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement, it will provide written notice of immediate termination of this Agreement to Contractor. Upon issuance of notice, this Agreement is terminated. However, any obligations existing at the time of termination will survive termination. Contractor shall not make expenditures, enter into agreements, or encumber funds in its possession, or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County. Termination shall not excuse liabilities incurred prior to the termination date.

c. **Default.** If Contractor defaults in the performance of any of its material obligations under this Agreement for a period of thirty (30) days after the County sends notice of such default to the address on this Agreement, County may, at its option, terminate the Agreement, such termination to be effective immediately upon expiration of the thirty day notice period; provided, however, that in the event Contractor provides written notice to County that the default cannot reasonably be cured by Contractor within said thirty (30) day period and the Contractor provides written certification that it is, in good faith, endeavoring to cure said default, then the thirty (30) day cure period shall be extended for an additional reasonable period to allow for such cure, but any such extended period shall not exceed 30 additional days, unless otherwise mutually agreed in writing by both County and Contractor.

9. Confidentiality. Contractor acknowledges that Contractor may, in the course of its performance under this Agreement, be exposed to or acquire information that is the confidential information of County or County's clients. Any and all (i) County or County client information, (ii) information provided by County and marked confidential, or (iii) information identified as confidential in a separate writing, that becomes available to Contractor in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items, including software, that result from Contractor's use of the Confidential Information are also deemed Confidential Information. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of Contractor's own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information for any purposes whatsoever, except as may be provided elsewhere under this Agreement or in conformance with Exhibit A. Contractor agrees that, upon termination of this Agreement or at County's request, Contractor will turn over to County all documents, papers and other matter in Contractor's possession that embody Confidential Information.

10. Compliance with Applicable Laws: Compliance with Tax Laws. Contractor agrees to comply with the rules and regulations of County, applicable state and federal regulations and all other provisions of state and federal law relating to Contractor's performance of Services under this Agreement. To the extent applicable Contractor certifies it shall comply with all applicable Public Contract Laws to include ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and 279C.580 (3) and (4). ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and ORS 279C.580(3) and (4) are incorporated into this Agreement by reference. Contractor will provide services to County clients without regard for race, color, creed, religion, or national origin in compliance with Title IV, Civil Rights Act, 1954. Further, Contractor certifies compliance with the tax laws of the State of Oregon or a political subdivision of the state, including ORS 305.620 and ORS Chapters 316, 317 and 318.

11. Ownership and Rights.

a. **Ownership of Work Product by County.** All work product, including but not limited to the Services and deliverables listed in Exhibit A ("Work Product") shall be exclusively owned by County and shall be considered works made for hire by Contractor for County. Except as set forth below, County shall exclusively own all United States and international copyrights and all other intellectual property rights in the Work Product.

b. **Vesting of Rights.** With the sole exception of any Preexisting Works, as defined and identified below, Contractor agrees to assign, and upon creation of Work Product automatically assigns, to County, its successors and assigns, ownership of all United States and international

copyrights and all other intellectual property rights in such Work Product. This assignment is undertaken in part as a contingency against the possibility that any such Work Product, by operation of law, may not be considered a work made for hire by Contractor for County. From time to time, upon County's request, Contractor and/or its personnel shall confirm such assignments by execution and delivery of such assignments, confirmations of assignments, or other written instruments as County may request. County and its successors and assigns shall have the right to obtain and hold in its own name all copyright registrations and other evidence of rights that may be available for Work Product and any portions thereof.

c. **Preexisting Works.** In the event that any portion of the Work Product constitutes a preexisting work for which Contractor cannot grant to County the rights set forth above, Contractor shall specify below: (1) the nature of such preexisting work; (2) its owner; (3) any restrictions applicable to Contractor's or County's use of such preexisting work; and (4) the source of Contractor's authority to employ the preexisting work in the preparation of the Work Product. Any works that satisfy the above requirements shall be considered as "Preexisting Works." The only Preexisting Works that may be used in any Work Product are the Preexisting Works specified herein, if any, and any Preexisting Works that may be approved in writing by County prior to use.

d. **Grant of License.** Upon receipt of payment for Services, Contractor hereby grants to County a limited, non-exclusive, royalty-free, worldwide, perpetual and irrevocable license to use and reproduce the Preexisting Works solely in support of the agreed upon work and Services as specified in Exhibit A.

12. Subcontracts; Assignment. Contractor shall not enter into any subcontracts for any of the Services required under this Agreement without County's prior written consent. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld).

13. Governing Law; Jurisdiction; Venue. This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of Oregon without regard to its conflicts of laws rules. Any claim, action, suit or proceeding between County and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Oregon for Yamhill County. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THIS FORUM IS AN INCONVENIENT FORUM.

14. Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

15. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

16. Attorney Fees. In the event of legal suit or action, including any appeals therefrom, brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions under this Agreement, each party shall pay their own

attorney's fees and costs incurred in the suit or action, including investigation costs, expert witness fees and all costs of depositions.

17. Severability. If any term of this Agreement is held to be invalid or unenforceable, it shall be severed from this Agreement and the balance of the Agreement shall be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.

18. No Third-Party Beneficiaries. Except as expressly provided herein, nothing contained in this Agreement is intended, nor shall it be construed to create rights for the benefit of third parties.

19. Certification of reading and understanding of documents; Precedence. The Contractor certifies it has read and fully understands all Contract Documents including Solicitation Documents and terms and conditions. The Contractor understands and acknowledges that in signing this Agreement the Contractor waives all rights to plead any misunderstandings regarding the same. **In the event of a discrepancy or inconsistency between Contractor's Proposal or any other contract document including this Agreement, this Agreement shall take precedence.**

20. Exhibits and Recitals. All exhibits and schedules referenced herein are incorporated herein. The recitals set forth above are incorporated into this Agreement as a material and substantive part of this Agreement.

21. Time is of the Essence. Time is of the essence in the performance of this Agreement.

22. Status of the Project Supervisor. Justin Hogue, Business Services Director, is the Project Supervisor (the "Supervisor"). The Supervisor or his designee shall perform technical inspections of Services and shall have authority to stop the Services whenever such stoppage shall be necessary to insure proper execution of the Agreement. The Supervisor or his designee may reject all Services and materials that do not conform to the Agreement and shall decide questions that arise in the execution of the Project Services. The Supervisor has authority to reject or accept the Project Services.

23. Prohibition of Discrimination. In hiring employees or subcontractors for performance of Services under this Agreement neither Contractor, any subcontractor or any other person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap, or sex discriminate against a person who is qualified and available to perform Services to which employment relates.

24. Access to Records. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all work and Services performed under this Agreement. They shall make such materials available at their respective offices at all reasonable times during this Agreement, and for three (3) years from the date of final payment under this Agreement, for inspection by County or its authorized designees. Copies shall be furnished at no cost to County if requested.

THIS AGREEMENT CONSTITUTE 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 CONTRACTOR, 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.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth adjacent to their signatures below.

CONTRACTOR

YAMHILL COUNTY, OREGON

Print Name/ Title _____
Date: _____

LINDSAY BERSCHAUER, Chair
Board of Commissioners
Date: _____

SS# /Tax ID#: _____

APPROVED AS TO FORM

KENNETH HUFFER,
County Administrator
Date: _____

By: _____
CHRISTIAN BOENISCH
County Counsel

Exhibit A (see attached)