

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 16-08-30-04

ORDER/ IN THE MATTER OF
AUTHORIZING AWARD OF A CONTRACT
FOR INMATE FOOD SERVICES FOR THE
LANE COUNTY ADULT CORRECTIONS
FACILITY, AND GRANTING AUTHORITY TO
THE COUNTY ADMINISTRATOR TO
EXECUTE THE CONTRACT.

WHEREAS, under ORS 169.140 the Lane County Sheriff's Office (LCSO) is responsible for providing wholesome food to inmates; and

WHEREAS, since 2011 the County has contracted with an outside provider to provide inmate food services at the Lane County Adult Corrections Facility (LCAC); and

WHEREAS, the County's current contract to provide the inmate food services expires on October 31, 2016; and

WHEREAS, LCSO established a selection committee composed of County Sheriff's Office and legal staff to prepare a two-step solicitation process; Request for Qualifications (RFQ) and Request for Proposals (RFP); and

WHEREAS, the selection committee has sought to find the best balance to meet the LCSO's standards of operation through innovation and consistent quality control, and expects to make a final selection of a contractor within the next 7 days; and,

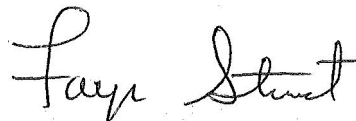
WHEREAS, these services are within the County's' anticipated fund levels for FY16/17; and,

WHEREAS, it is necessary to act promptly to award and execute a contract to provide the maximum opportunity to prepare for the transition and assumption of the Inmate Food Services responsibilities for the Lane County Adult Corrections Facility;

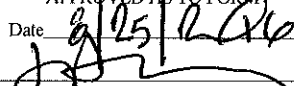
NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. Upon selection of a vendor a contract will be awarded for Inmate Food Services at the Adult Correction Facility of the Lane County Sheriff's Office, and the County Administrator is granted authority to execute a contract in substantially the form included as Exhibit A to this Order.

ADOPTED this 30th day of August, 2016.



Faye Stewart, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 8/25/16

LANE COUNTY OFFICE OF LEGAL COUNSEL



LANE COUNTY CONTRACT FOR GOODS AND/OR SERVICES

Contract Title: Inmate Food Services

This Contract is entered into by and between Lane County, a political subdivision of the State of Oregon ("County"), and [Enter Contractor's legal name] ("Contractor"), referred to collectively in this Contract as "the parties". County and Contractor agree as follows:

1. STATEMENT OF WORK

1.1 Contractor will furnish or perform Inmate Food Services for County in accordance with the requirements of this Contract.

1.2 Contractor's Work is further described in Exhibit A.

2. CONTRACT DOCUMENTS

2.1 **The Contract.** The Contract consists of this document and all exhibits listed below, which are incorporated into this Contract as referenced here. In the event of a conflict between the requirements of this document and any Exhibit, the requirements in this document will prevail; and in the event of a conflict between Exhibit A and Exhibit D, the requirements of Exhibit A will prevail.

2.2 **Exhibits.** With this document, the following Exhibits are incorporated into the Contract:

- Exhibit A Scope of Services Required
- Exhibit B Standard County Contract Conditions
- Exhibit C Insurance Coverages Required
- Exhibit D Contractor's Proposal
- Exhibit E Special Contract Terms and Conditions

3. CONSIDERATION AND PAYMENT

3.1 **Consideration.** In consideration for Contractor's performance, County agrees to pay [Enter the amount in words and figures, OR the reference to the Exhibit and section where the fee is given]. County is not obligated to pay any amount greater than that stated here.

3.2 **Payment.** Payment will be made [Enter "upon completion," OR the amount per period, OR other terms agreed upon for payments]. Any payments will customarily be made within thirty (30) days of receipt of a properly submitted and approved invoice from Contractor.

4. EFFECTIVE DATE AND DURATION

4.1 **Effective Date.** Upon the signature of all parties, this Contract is effective; however, the provision of meals under this agreement will not commence until November 1, 2016..

4.2 **Duration.** Unless extended or terminated earlier in accordance with its terms, this Contract will terminate October 31, 2019. However, such expiration shall not extinguish or prejudice either party's right to enforce this agreement with respect to any breach or default in performance which has not been cured.

5. **MULTIPLE COUNTERPARTS.** This 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 this Contract and any amendments so executed will constitute an original.

SIGNATURES FOLLOW ON NEXT PAGE

SIGNATURES

CONTRACTOR'S CERTIFICATIONS:

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

- The undersigned person has authority to execute this Contract on behalf of Contractor, and to bind Contractor to its terms,
- Contractor 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 Contractor 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.

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

CONTRACTOR:

COUNTY:

[ENTER CONTRACTOR'S LEGAL NAME]

LANE COUNTY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

Lane County, Public Service Building
125 E. 8th Avenue
Eugene, Oregon 97401

Tax ID No.: _____

EXHIBIT A – SCOPE OF SERVICES REQUIRED

C.1 COUNTY AND FOOD SERVICE PROVIDER (FSP) RESPONSIBILITIES

County provides:

- (a) Adequate kitchen facilities for preparation of food at the Jail, and all utilities necessary for its operation. The kitchen is properly equipped and ready to operate together with heat, refrigeration and utilities.
- (b) Basic training to FSP personnel in the areas of key control, radio usage, evacuation procedures, fire safety, inmate jail management system, Misconduct Report usage, and lockdown procedures; as they apply to kitchen staff.
- (c) Trash and garbage removal and extermination services.
- (d) Accurate and timely information for the number of meals to be served to inmates within the facility. Inmate meal counts will be called in by all housing areas to kitchen staff. The FSP must record the counts provide to the Support Services Lieutenant or designee on a weekly basis.
- (e) Up to 9 medically cleared inmates to assist in the kitchen with food service, sanitation, and related tasks.
- (f) Adequate ingress and egress to all production areas.
- (g) Radio communication, computers, printers, fax machine and business telephone service. The FSP will not be allowed to add any computer program, software or hardware to a County computer without prior approval.
- (h) Building maintenance, including maintenance of water, sewer, ventilation, lighting, air conditioning, refrigeration, duct work, floor coverings, painting and wall and ceiling services. County does not provide perform day to day cleaning in the kitchen area.
- (i) Adequate preparation, storage and holding equipment facilities space.
- (j) Security, control and limitation of inmate movement in and around the food service area, including physical security of employees, suppliers, and other authorized visitors.
- (k) Small lockers in the Jail lobby for employees' placement of personal items not allowed into the secure perimeter, for use only while on duty.

The FSP must provide all other items and services described in this exhibit, except as specifically noted herein.

C.2 FOOD, SUPPLIES, AND SERVICE

The FSP must:

- (a) Purchase, receive and stock all foods necessary for the preparation of each meal in sufficient quantity to meet the needs of inmates during the period of the contract.
- (b) Maintain a minimum of 7 days' non-perishable food stocks, in compliance with OJS, local rules and regulations, and County's requirements. The stocks must meet the requirements of emergency food service and emergency menu substitutions.
- (c) Provide all paper, approved janitorial supplies, and office supplies for the food service program, including all office supplies necessary for the management of the operation other than forms required by the Jail. All such items must be properly stored and controlled of those items to prevent theft, contraband, damage or loss.
- (d) Provide uniforms to all FSP staff in a color easily distinguished from inmates' wear.
- (e) Have on hand menu items and all necessary supplies and service wares to maintain food service operations during a lock-down situation.
- (f) In the event the kitchen is not operational for any reason, be able to provide food service to inmates meeting the minimum requirements of the OJS.

C.3 FOOD SERVICE EQUIPMENT

The FSP has full use of the kitchen equipment owned by County for its use in carrying out the requirements of the contract. The FSP will have the right, at its expense and subject to written authorization from the Support Services Lieutenant and Maintenance Supervisor, to install any

new equipment needed for efficient operations. The FSP will be responsible for the maintenance and repair of equipment.

C.4 FSP STAFF

FSP staff must:

- (a) Be selected for assignment to the Jail based upon a rigorous selection including not only job skills and ability to work successfully in a jail environment, but also examination of candidates' criminal history, financial history, medical check, drug test, TB test, DMV check, fingerprints, and photographs.
 - (b) Undergo an initial physical examination and drug screening test before commencing work, and any such additional physical examinations as required by law.
 - (c) Successfully pass a background check conducted by the Sheriff's Office, which will include criminal background and DMV records. The County will provide 10 background checks the first year, and 5 additional checks each subsequent year at no cost to the FSP. Additional background beyond these amounts will be charged to FSP at the rate of \$25.00 each. County will provide security badges for each staff employee passing a background check. Replacement badges will be charged to the FSP at the rate of \$15.00 each.
 - (d) Wear service uniforms provided by the FSP. FSP staff must further adhere to the Lane County Sheriff's Office General Orders that pertain to non-uniformed employees, "Section 4.04 Personal Appearance".
 - (e) Practice all security measures consistent with the Lane County Sheriff's Office General Orders, Post Orders, and Policies and Procedures.
 - (f) FSP staff must participate in mandatory training provided by LCAC personnel, including:
 - Security procedures.
 - Key control.
 - Radio use and operation.
- The FSP is responsible for the time and cost of FSP employees' participation in the training.
- (g) Sign a "Consent to Search Waiver" agreeing search of their person, property, and vehicles while on the grounds of the Jail.
 - (h) Use designated entrances or exits, and check in and out of the facility at Central Control.
 - (i) Prohibit social contact or fraternization of any kind with inmates or inmate families while on County property or in the community, consistent with Lane County Sheriff's Office General Orders, Post Orders, and Policies and Procedures.

C.5 STAFF ASSIGNMENTS AND DUTIES

The FSP must:

- (a) Select a Food Service Supervisor with a minimum of 3 years' experience as a manager in a correctional facility with an average daily population of 400 or more.
- (b) Appoint a Food Service Supervisor and a Lead Cook (or Assistant Food Service Supervisor), one of whom must be on duty each day. In addition, the Food Service Manager or Assistant Food Service Manager is to be on call 24 hours per day to provide administrative and emergency backup for on-duty Contractor personnel.
- (c) Employ at the LCAC only employees having a minimum of one year's experience as a food service employee in an institutional food service setting.
- (d) Provide training to ensure FSP staff know and understand the General Orders, Post Orders, and Policies and Procedures of the LCAC. Attendance at such trainings must be mandatory for all supervisory and regular employees.
- (e) Provide health education training for food service workers while supervising inmate workers, including local health regulations, proper procedures governing use and cleaning of kitchen equipment, cleaning and temperature of foods, along with proper handling, preparation, storage and disposal of foods.

- (f) Monitor the inmate labor in the kitchen area and for overseeing their daily work assignments to ensure the work is completed in accordance with proper safety, sanitation, and nutritional guidelines.

C.6 MENUS AND FOOD SELECTION

The FSP must provide menus certified annually for nutritional adequacy and compliance with standards, which must provide a minimum of 2600 calories per day (not including "filler" calories such as additional butter, sugar and other similar items). The FSP must pay the cost for certification by a registered or certified dietitian. Sack lunches must also comply with all nutritional standards.

All raw food used for meals meets the following specifications:

- Beef – U.S.D.A. Inspected
- Poultry – U.S.D.A. Grade A No. 1
- Eggs and Dairy Products – U.S.D.A. Grade A
- Frozen Foods – U.S.D.A. Grade A
- Milk – 2% Low Fat
- All Produce and Dry goods procured from inspected sanitary farms and suppliers.

The FSP must provide special diets for inmates when requested by LCAC or directed by a medical provider, including special diets for such purposes as: a) medical, b) strongly-held belief, c) religious, or d) disciplinary. When possible, the menu of the day is to be modified to accommodate special diets. The FSP must maintain complete records, for one year, showing which inmates are given special diets, and the diet content.

C.6 HEALTH STANDARDS AND CLEANLINESS

Lane County places high emphasis on kitchen cleanliness and maintenance. At the conclusion of each meal, the FSP is responsible for cleaning and sanitizing all food preparation and serving equipment, storage areas, trays, carts, dishes and utensils. Trash and garbage from all areas served must be removed daily to an approved location.

The FSP must meet Lane County Environmental Health Department and State of Oregon Health standards and regulations.

The kitchen, all equipment, storage rooms, trash area, and all other areas designated as the responsibility of the FSP must be cleaned daily, according to a cleaning schedule showing work completion dates for cleaning all equipment, and including monthly sanitation reports.

Controls of potentially hazardous or contraband materials are to be maintained, including inventories of all knives and sharp devices to be made prior to each meal being served and when groups of inmate workers are leaving the kitchen area.

C.7 FOOD PREPARATION AND SERVICE

Meals must be served at a minimum of 140° F. for hot food, and a maximum of 41 ° F. for cold foods, regardless of the food service location.

C.8 RECORD KEEPING

The FSP must maintain and make readily available for inspection accurate records, including the staffing and work schedule, cleaning schedule, special diet documentation, complete job descriptions for all employees and inmate worker, work records and absentee records for both staff and inmate workers, testing of serving areas, foods, temperatures of foods, refrigeration, and sanitation, including any other required records to meet health care standards, inspection reports, and menu analyses.

A sample of each meal served must be maintained for 24 hours.

C.9 STANDARDS AND QUALITY CONTROL

The FSP must ensure that the Food Service Program is in compliance with ORS 169.076, Oregon Jail Standards and Lane County Environmental Health Department rules, including maintenance of required records.

The FSP must develop and maintain a quality control plan, including maintenance of not less than 3 years' records. The plan must accommodate inspections, inmate grievances, County directions and requests, and when necessary, any corrective actions taken.

EXHIBIT A

EXHIBIT B – STANDARD COUNTY CONTRACT CONDITIONS

1. CONTRACTOR'S STATUS

- 1.1 Independent Contractor Status.** The performance of this Contract is at Contractor'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.
- 1.2 Contractor's Responsibilities.** Notwithstanding the Oregon Tort Claims Act or the provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to any claims between County and Contractor. Contractor 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 Contractor or Contractor's subcontractor, if any.
- 1.3 Contractor Not Employee.** Contractor 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 payment.
- 1.4 Reporting of Payments.** Contractor acknowledges that County will report the total amount of all payments to Contractor, including any expenses, in accordance with Federal Internal Revenue and State of Oregon Department of Revenue regulations.

2. INSURANCE AND INDEMNIFICATION

- 2.1 Contractor's Required Insurance.** Contractor must provide and maintain all insurance called for on the Exhibit entitled "Insurance Coverages Required" and must notify Lane County Risk Management of any material reduction or exhaustion of aggregate limits. Contractor may not commence any work until Contractor furnishes evidence of all required insurance specified by the County, and has obtained the County's approval as to limits, form, and amount. Coverage must include an Additional Insured Endorsement that includes completed operations, and which is primary and non-contributory with any other insurance and self-insurance.
- 2.2 Contractor to Maintain Insurance.** Contractor may not cancel, materially change, or not renew insurance coverages. If any policy is canceled before final payment by County to Contractor, Contractor must immediately procure other insurance meeting the requirements. Any insurance bearing on adequacy of performance must be maintained after completion of the Contract for the full guarantee period. If Contractor fails to maintain any required insurance, County reserves the right to procure such insurance and to charge the cost to Contractor.
- 2.3 Workers' Compensation.** Contractor, its 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 Contractor's responsibility for payment of damages resulting from Contractor's operation under this Contract.
- 2.5 Indemnification.** To the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, and to the extent otherwise provided for in private contracts of insurance, Contractor agrees to indemnify, defend, and hold County, its Commissioners, agents, officers and employees, harmless from all damages, losses and expenses, including but not limited to attorney fees, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from Contractor's performance of or failure to perform under this Contract. However, Contractor will not be required to indemnify or defend County for any liability arising solely out of wrongful acts of County's own Commissioners, officers, employees, or agents.

3. CONTRACTOR'S OBLIGATIONS

- 3.1 Contractor must meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services or personal services covered by this Contract, unless County has good cause and the Contract provides otherwise.
- 3.2 Contractor must make all provisions of the Contract applicable to any subcontractor performing work under the contract.
- 3.3 Contractor agrees that County will not be responsible for any losses or unanticipated costs suffered by Contractor as a result of the contractor's failure to obtain full information in advance in regard to all conditions pertaining to the work.
- 3.4 Contractor certifies that Contractor has all necessary licenses, permits, or certificates of registration necessary to perform the contract and further certifies that all subcontractors will likewise have all necessary licenses, permits or certificates before performing any work. The failure of Contractor to have or maintain such licenses, permits, or certificates is grounds for rejection of a bid or immediate termination of the contract.
- 3.5 Contractor 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, Contractor agrees that County and its duly authorized representatives may have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts, copies and transcripts. Contractor 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 Contractor must, in the course of carrying out Contractor's Work, comply at all times with the then-current "Mandatory County Policies for Vendors" published on County's County-Wide Bid Page at:
<http://www.lanecounty.org/Departments/CAO/Operations/Purchasing/Pages/MandatoryVendorPolicies.aspx>

4. CONTRACTOR OBLIGATIONS REQUIRED BY OREGON AND FEDERAL LAW

- 4.1 Pursuant to ORS 279B.220 or ORS 279C.505, as applicable, Contractor must:
 - (a) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
 - (b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
 - (c) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- 4.2 Pursuant to ORS 279B.230 and 279C.530, as applicable:
 - (a) Contractor must promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
 - (b) All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 4.3 Pursuant to ORS 279B.235, 279C.520, and 279C.540, as applicable, in performing the work of this Contract:

- (a) 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:
 - (i) 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
 - (ii) 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
 - (iii) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020.
 - (b) 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.
 - (c) If this Contract is for personal services as described in ORS 279A.055, an 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.
 - (d) If this Contract is for services at a county fair or for other events authorized by a county fair board, 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.
 - (e) Except as provided in subsection (d) of this section, if this Contract is for services, all 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. An employer shall give notice in writing to employees who work on a contract for services, 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.
 - (f) This section (4.3) does not apply if the Contract is strictly for goods or personal property.
- 4.4** Pursuant to ORS 279A.120, if Contractor is a nonresident bidder and the Contract price exceeds \$10,000, Contractor must promptly report to the Department of Revenue on forms to be provided by the 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.
- 4.5** Pursuant to ORS 316.167, Contractor and any subcontractor must pay to the Department of Revenue all sums withheld from employees.
- 4.6** Contractor must represent and warrant that Contractor has complied with the tax laws of the State of Oregon and its political subdivisions, including but not limited to ORS305.620 and ORS chapters 316, 317 and 318. Contractor must continue to comply with the tax laws described in this section during the term of the Contract. Contractor's failure to have complied or comply with these tax laws will constitute a default, for which the County may terminate the Contract and seek damages and other relief available under the terms of the Contract or under applicable law.
- 4.7 Equal Employment Opportunity.** During the performance of this Contract, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will comply with all

applicable requirements of "29 CFR Part 471, Appendix A to Subpart A" (copy available at: <http://www.dol.gov/olms/regs/compliance/EO13496.htm>), and will include the terms of these requirements in all subcontracts entered into under this Contract.

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.
- 5.2 Termination.** The parties may jointly agree to terminate this Contract at any time by written agreement. 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. County may terminate the contract by written order or upon request of Contractor, if the work cannot be completed for reasons beyond the control of either Contractor or the County, or for any reason considered to be in the public interest other than a labor dispute, or by reason of any third party judicial proceeding relating to the work other than one filed in regards to a labor dispute, and when circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work.
- 5.3 Remedies and Default.** County may exercise any of the following remedies for Contractor's failure to perform the scope of work or failure to meet established performance standards: reduce or withhold payment; require Contractor to perform, at Contractor'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 public contract or other applicable law. The Contract may be canceled at the election of County for any substantial breach, willful failure or refusal on the part of Contractor to faithfully perform the contract according to its terms.
- 5.4 Availability of Funds.** County certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement for the period within the current budget; however, Contractor understands and agrees that, if the County does not appropriate funds for the next succeeding fiscal year to continue payments otherwise required by the Contract, the Contract will terminate at the end of the last fiscal year for which payments have been appropriated. The County will notify Contractor of such non-appropriation not later than 30 days before the beginning of the year within which funds are not appropriated. Upon termination pursuant to this clause, County will have no further obligation to Contractor for payments beyond the termination date. This provision does not permit County to terminate the contract in order to provide similar services or goods from a different contractor.
- 5.5 Force Majeure.** Neither County nor Contractor will be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they 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 Contractor, Contractor will be liable for such supplies or services if they were obtainable from other sources in sufficient time to permit Contractor to meet the required schedule. County may terminate this Contract upon written notice after determining that 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 arbitration, using such process as they may choose at the time.

- 6.2 Governing Law.** 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. 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 Forum and Venue.** All disputes and litigation arising out of this Contract will be decided by the state or federal courts of Oregon. Venue for all disputes and litigation will be in Lane County, Oregon.

7. MISCELLANEOUS PROVISIONS

- 7.1 Merger.** This Contract contains the entire agreement of County and Contractor with respect to the subject matter of this Contract, and supersedes all prior negotiations, agreements and understandings.
- 7.2 Waiver.** Failure of County to enforce any provision of the 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.
- 7.3 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.
- 7.4 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.
- 7.5 Time is of the Essence.** The parties agree that time is of the essence with respect to all provisions of this Contract.
- 7.6 Protection of Consumer Personal Information.** Contractor must have and maintain appropriate administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of consumer personal information pursuant to ORS 646A.622(2), and agrees to comply with all other provisions of the Oregon Consumer Identity Theft Protection Act (ORS 646.600 et seq.) throughout the term of this Contract.
- 7.7 Non-Assignment.** Contractor 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 Contractor 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.

EXHIBIT C

INSURANCE COVERAGES REQUIRED

Contractor shall not commence any work until Contractor obtains, at Contractor's own expense, all required insurance as specified below. Such insurance must have the approval of Lane County as to limits, form and amount. The types of insurance Contractor is required to obtain or maintain for the full period of the contract will be:

COMMERCIAL GENERAL LIABILITY The insurance shall include:

Policy must include:

- Commercial General Liability
- Damage to Rented Property (\$50,000)
- Medical Expenses (\$5,000)
- Personal and Advertising (Same as per occurrence)
- Products/Completed Operations (Same as per occurrence)

POLICY LIMITS

- \$2 million per occurrence*/\$4 million aggregate
 - \$ occurrence / aggregate (Amount pre-approved by Risk Management or required by contract)
 - Amount required by funding source
- *Umbrella coverage to increase the policy limits to the required amount is acceptable**

Aggregate limits:

- Per Policy (most contracts)
- Per Project (construction contracts)

All policies must be of the occurrence form with combined single limit for bodily injury and property damage. Any deviation from this must be reviewed by Risk Management. All claims-made forms must be approved by Risk Management in advance and provide tail/continuous coverage for 24 months from the end of the project.

AUTOMOBILE LIABILITY insurance with limits as specified below. The coverage shall include owned, hired and non-owned automobiles and include Lane County and its divisions, its commissioners, officers, agent, and employees as additional designated insureds (CA 20 48 02 99 or equivalent). ***Umbrella coverage to increase the policy limits to the required amount is acceptable.**

LIMITS

- \$2 million combined single limit per accident for bodily injury and property damage*
- Amount pre-approved by Risk Management and required by contract: \$
- Amount required by funding source

PROFESSIONAL LIABILITY insurance – with limits not less than \$ _____ (\$1,000,000 per occurrence minimum when required). Policy must provide tail/continuous coverage for 24 months from the end of the project.

POLLUTION LIABILITY INSURANCE – with limits not less than \$ 1 million per occurrence. Coverage must be continuous for 24 months from the end of the project.

ADDITIONAL INSURED ENDORSEMENT The general liability insurance coverage required for performance of this contract shall be:

By blanket or by written contract requirement on any insurance policies required herein with respect to Provider's activities being performed under the Contract. The contract **MUST** include language that the additional insured endorsement is required, and proof of blanket coverage from your policy must be provided.

By specific (not blanket or by written contract requirement) **endorsement** to name **“Lane County and its divisions, its commissioners, officers, agents and employees as additional insureds”** on any insurance policies required herein with respect to Provider's activities being performed under the Contract. The **additional insureds must be named as an additional insured by separate endorsement**, and the policy must be endorsed to show cancellation notices to the Lane County department who originated the contract.

Coverage shall include completed operations and be primary and non-contributory with any other insurance and self-insurance.

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY as statutorily required for persons performing work under this contract. Any subcontractor hired by Contractor shall also carry Workers' Compensation and Employers' Liability coverage.

EMPLOYER'S LIABILITY Statutory amount (currently \$500,000 in Oregon, other states may vary)
 Other: minimum of \$1,000,000 when not regulated by statute

FIDELITY BOND covering the activities of any person, named or unnamed, responsible for collection and expenditures of funds. Limit \$ _____ per employee. (\$10,000 minimum when required)

DIRECT ALL INSURANCE RELATED DOCUMENTS FOR YOUR CONTRACT TO YOUR CONTACT AT LANE COUNTY; DO NOT DIRECT YOUR DOCUMENTS DIRECTLY TO RISK MANAGEMENT. FAILURE TO COMPLY MAY RESULT IN A DELAY OF CONTRACT EXECUTION.

**Any questions concerning insurance and indemnity should be directed to
Lane County Risk Management at LCRISKMG@co.lane.or.us**