



REQUEST FOR PROPOSALS

CROOK COUNTY HEARINGS OFFICER SERVICES Crook County, Oregon FALL/WINTER 2022

PROJECT INFORMATION

<u>Project Name:</u>	Crook County Hearings Officer Services
<u>Date of Issue:</u>	Tuesday, October 25, 2022
<u>Question Deadline:</u>	November 11, 2022
<u>Proposals Due:</u>	November 22, 2022 at 2 p.m.
<u>Contract Award:</u>	December 7, 2022
<u>Project County:</u>	Crook County, Oregon
<u>Department:</u>	Crook County Community Development
<u>Project Manager:</u>	Will VanVactor, CCCD Director 541-447-3211; will.vanvactor@co.crook.or.us

PROPOSAL

TO: Crook County

ADDRESS: 300 NE Third Street, Prineville, Oregon 97754

PROJECT TITLE: Hearings Officer Services

Proposer's contact information for this proposal:

Name: _____ Company: _____

Address: _____ Telephone: _____

Email: _____

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The Attachments attached and incorporated into this Proposal are:

1. Proposer's Certificate
2. Sample Contract with Exhibits
3. Scope of Services (will be Exhibit E to Contract)
4. Acknowledgement of Insurance Requirements

1. INTRODUCTION

A. Request for Proposals Advertisement

CROOK COUNTY, OREGON REQUEST FOR PROPOSALS Hearings Officer Services

NOTICE IS HEREBY GIVEN that Crook County, through its County Court, is seeking one or more qualified contractors to provide Hearings Officer Services to conduct and decide code compliance violation hearings and quasi-judicial land use decisions relating to the Crook County Code Titles 15 (Buildings and Construction), 17 (Subdivisions), and 18 (Zoning). **Sealed proposals will be received until 2:00 p.m. Tuesday, November 22, 2022.** Each proposal must be enclosed in a sealed envelope, with the proposer's name and marked "Hearings Officer Proposal," and delivered on or before the deadline to Crook County Community Development, Attn: Will Van Vactor at 300 NE 3rd St., Prineville, OR 97754, or hand delivered to the Crook County Administration Office at 203 NE Court St., Prineville, OR 97754. **The proposal opening will take place at 2:05 p.m. on November 22, 2022,** at Crook County Administration Office at 203 NE Court St., Prineville, OR 97754. Final award will be announced during a County Court Meeting at approximately 9:00 a.m. on **Wednesday, December 7, 2022.**

Complete proposal documents and any addenda are available for download from the County's website at <http://co.crook.or.us/rfps> or from Community Development Director Will Van Vactor at 300 NE 3rd St. Prineville, OR 97754; telephone: (541) 447-3211; email: will.vanvactor@co.crook.or.us, who is also designated as the person to whom all inquiries are to be directed regarding the RFP, or requests of a faxed or hard copy of the RFP.

Crook County reserves the right to accept the proposal and award the contract to the highest scoring responsive, responsible proposer which is in the best interests of the County, to postpone the acceptance of proposals received and the award of the contract for a period not to exceed thirty (30) days, or to reject any and all proposals received and further advertise for proposals.

This is **not** a public work contract subject to State Prevailing Wage Rate or the Federal Prevailing Rate of Wage required under the Davis-Bacon Act (40 USC § 3141 et seq.).

- Published in the Central Oregonian October 25, 2022

B. Overview

Crook County Community Development ("Crook County" or "County") is seeking responsive, responsible proposers to submit proposals for code compliance hearing officer services and quasi-judicial land use matters. The initial primary focus will be to conduct hearings regarding code compliance cases but may expand to include land use applications. The selected contractor will render decisions consistent with the Crook County Code, Oregon Revised Statutes, and Oregon State Building and Specialty Codes. Firms and individuals submitting proposals will be screened based upon their proposals. If needed or desirable, an evaluation committee will conduct interviews with the most qualified proposers.

C. Project Coordinator Point of Contact

Questions should be directed to Will VanVactor, Community Development Director (Director) at will.vanvactor@co.crook.or.us or 541-447-3211. Information obtained from the Director or any officer, agent, or employee of Crook County or any other person shall not affect the risks or obligations assumed by the proposer or relieve the proposer from fulfilling any conditions of the Contract Documents. Should a proposer desire an interpretation of the Contract Documents, such proposer shall request, in writing and addressed to the address to receive bids, an interpretation of the provision no later than November 11, 2022 at 2 p.m. No oral questions will be accepted. All questions received will be answered by addenda to this RFP, which will be posted on the County's website. Subject to Oregon law, anonymity of the source of the specific questions will be maintained in the written responses.

D. Procurement Documents

The RFP Packet is available on the Crook County website at <http://co.crook.or.us/rfps>; or via request to Will VanVactor, Community Development Director (Director) at will.vanvactor@co.crook.or.us or 541-447-3211.

E. Addenda

This RFP may be changed only by a written addendum issued by the County. Addenda shall be posted on the Crook County website at <http://co.crook.or.us/rfps> not later than November 16, 2022. Failure of a prospective proposer to respond to timely noticed addenda in their proposal may cause a proposal to be rejected as non-responsive. Each proposer shall ascertain prior to submitting a proposal that the proposer has received all addenda issued and affirmatively mark receipt of the addenda in section 9, Proposer's Information.

F. Prevailing Wage Rates and Bid Security

This is **not** a public work contract subject to State Prevailing Wage Rate or the Federal Prevailing Rate of Wage required under the Davis-Bacon Act (40 USC § 3141 et seq.) No bid security is required for this solicitation.

G. Notice of Intent to Award

A notice of intent to award will be posted on the Crook County website at <http://co.crook.or.us/rfps>.

2. SELECTION PROCESS

A. Selection Process Overview

All proposals submitted by the RFP due date will be subject to a standard review process. An initial review of each proposal will be conducted to determine if it is complete, in the required format, and in compliance with all requirements of this RFP. Failure to meet all of the requirements may result in a rejected proposal. Each proposal that passes the initial review will be evaluated and scored by a pre-selected Evaluation Committee, which will evaluate and score each proposal on a 100-point scale, using the assigned weights listed below.

The process may include a panel interview with the Evaluation Committee. The County also reserves the right to investigate and consider the references and past performance of any Proposer with respect to such things as provision of similar services and compliance with contractual obligations.

The County may postpone the award or execution of the Contract after announcement of the notice of intent to award in order to complete its investigation. Both interviews and information obtained from references may affect the proposal's ranking in the selection process. The Evaluation Committee will make a recommendation to the County Court, who will select the proposal it determines is the most advantageous to the County based on the criteria in the RFP. The scoring criteria will be as follows:

Evaluation Criteria:	Point Value:
Preferred qualifications	40
Apparent ability to meet County's needs	20
Price	30
Proposal for completing the work	10
Total:	100 Points

B. Schedule for Selection

The milestones for the selection process are set forth below. The dates are approximate but will be followed to the extent reasonably possible. The purpose of this schedule is for proposer information only. Required dates for submittals and any other activities are provided elsewhere in this RFP. The County reserves the right to change this schedule or terminate the entire procurement at any time.

- RFP publication: October 25, 2022
- Deadline for questions: 2 p.m. on November 11, 2022
- Final addenda, if any: November 16, 2022
- Proposals due: 2 p.m. on November 22, 2022
- Proposal opening: 2:05 p.m. on November 22, 2022
- Interviews (if necessary) November 29, 2022
- Recommendation to County Court: 9 a.m. on December 7, 2022
- Notice of Intent to Award: December 7, 2022
- Contract negotiation and execution: December 14, 2022
- Contracted services commence: January 1, 2022

C. Protests or Objections Regarding the Selection Procedure

A proposer may file a written protest or make a written request that the County Administration change any RFP procedure, provision, or specification. ANY PROTEST OR REQUEST FOR CHANGE MUST BE DELIVERED IN WRITING TO JOHN EISLER, Assistant County Counsel, at 300 NE Third Street, Prineville, Oregon 97754 on or before November 11, 2022 at 2:00 p.m. The purpose of this protest/request for change procedure is to permit the County time to correct, prior to the submission of proposals, specifications or procedures that may be improvident, unlawful, or which may unnecessarily restrict competition. This requirement is intended to eliminate, by permitting corrections prior to the submission of proposals, the waste of resources and delay that may result from the untimely detection of errors in the RFP, possible protests, and possible rejection of proposals. The County will consider each protest or request, amend the RFP accordingly, if warranted, and will notify in writing each prospective proposer of any change. No amendment of this RFP shall be effective unless made in writing and signed by the Community Development Director or County Counsel.

3. QUALIFICATIONS AND SCOPE OF WORK OVERVIEW

A. Preferred Qualifications

The County is seeking proposers that best meet the following qualifications:

- Member in good standing with the Oregon State Bar Association;
- Minimum of five years of legal experience in land use or code compliance;
- Effective legal research and writing skills; and
- Litigation and/or administrative hearing experience.

B. Sample Contract

A sample contract containing contractual terms and conditions is included at Attachment 2. It is anticipated that the initial contract term will be two years, with the option to extend for an additional three one-year terms.

C. Scope of Work

The contractor(s) selected under this RFP will be required to conduct all assigned code compliance and contested case hearings in Crook County and render decisions authorized by and pursuant to requirements of the Crook County Code, Oregon Revised Statutes, Oregon Administrative Rules, Oregon State Building and Specialty Codes, and the common law of the State of Oregon. The contractor must notify County if it has a conflict or apparent conflict upon receipt of an assigned case. The contractor must perform legal research, hold hearings, make determinations, and issue written rulings in accordance with all substantive and procedural requirements. The contractor shall keep adequate written records of all work performed for County. A more detailed scope of work is listed in Attachment 3.

D. Proposal Qualification Submittals

Proposals must include all of the following:

- A resume and/or other satisfactory evidence that the proposer has the preferred qualifications, with summaries of particularly relevant work and references if available.
- If a firm, the names and resumes of the principal officers, partners, and staff who will perform the work.
- The desired hourly rate for all persons performing the work.
- A list of any actual or potential conflicts.
- A description of the proposer's experience and understanding of the land use issues facing Crook County, including familiarity with the Crook County Code.
- A summary of the proposer's philosophy and approach in conducting hearings.

4. PROPOSAL PROCEDURES AND PREPARATION

A. Form and Quantity of Proposals

One original and four copies of the proposal must be submitted, addressed to: Crook County Development, Attn: Will VanVactor, 300 N.E. Third Street, Prineville, Oregon 97754, or hand delivered to Crook County Administration, 203 NE Court Street, Prineville, Oregon 97754, and must be received no later than 2:00 p.m. on November 22, 2022. Proposals will be opened at the Administration Office at 2:05 p.m. on November 22, 2022.

Proposals must be submitted in a sealed envelope and plainly marked on the outside showing the name of the proposer and the phrase "Hearings Officer Proposal." Electronic submissions will not be accepted. Any proposals received after 2:00 p.m. on November 22, 2022, will not be considered. Postmarks will not be used as a basis for determining timely delivery. Faxed or emailed submittals will not be accepted. Proposals received after the specified time or submitted to any other office will not be considered, except that, in the County's sole discretion, the County may accept late submittals if no timely submittals are received. It is the proposer's responsibility to ensure the proposal is submitted by the time and date and to the location as specified.

B. Modification and Withdrawal of Proposals

Prior to the Due Date, any proposal may be modified or withdrawn by notice to the party receiving proposals at the place designated for receipt of proposals. Such notice shall be in writing, signed by the authorized representative of the proposer, and delivered by 2 p.m. on November 22, 2022. Negligence on the part of the proposer in preparing the proposal confers no right for the withdrawal of the proposal after it has been opened. The proposal will be irrevocable for 120 days or until such time as Crook County specifically cancels the procurement, rejects the proposal, or awards a contract.

C. Public Records

All proposals submitted in response to this RFP shall become the property of Crook County and may be utilized in any manner and for any purpose by Crook County. Be advised that proposals and all documents submitted in response to this RFP are subject to public disclosure as required by applicable state and/or federal laws. Proposals should not include personal identifier information in resumes or other documents such as social security numbers, dates of birth, criminal clearance documents, etc. Crook County shall not in any way be liable or responsible for the disclosure of any such records. If you intend to submit any information with your proposal which you believe is confidential, proprietary, or otherwise protected from public disclosure (trade secret, etc.), you must separately bind and clearly identify all such material. The cover page of the separate binding must be red, and the header or footer for each page must provide as follows: "Not Subject to Public Disclosure." Where authorized by law, and at its sole discretion, Crook County will endeavor to resist disclosure of properly identified portions of the proposals.

D. Acceptance or Rejection of Proposals

Crook County reserves the right to accept or reject any or all proposals. Any proposal which Crook County determines to be incomplete or nonconforming may be rejected. Any evidence of collusion between proposers may constitute a cause for rejection of any proposals so affected.

E. Minority, Women, or Disadvantaged Business Enterprise (M/W/DBE)

M/W/DBEs shall receive equal opportunities to submit proposals and shall not be discriminated against on the grounds of race, color, sex, disability, or national origin in consideration of an award. A M/W/DBE is defined as a small business concern which is at least 51% owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged individuals include Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans.

F. Award and Commencement of Work

In awarding a contract, Crook County will accept and consider the proposal or proposals which, in the estimation of Crook County, will best serve the interest of Crook County. Crook County reserves the right to award a contract to the proposer(s) whose proposal is most advantageous to the County based upon the evaluation process and evaluation criteria contained within this RFP.

Recommendation for award is contingent upon successful negotiation of the contract and resolution of any protests. The successful proposer(s) shall be required to sign the negotiated contract, which will be in the form and content as approved by Crook County. The final authority to award a contract rests solely with the Crook County Court. The successful proposer shall not be allowed to begin work under any negotiated contract until such time as the contract has been approved by Crook County Counsel's Office and executed by the Crook County Court. The successful proposer must agree to all terms, insurance coverage provisions, and conditions of the contract with Crook County. The required insurance coverage is listed in Attachment 5.

G. Protest of Award

After Crook County approves and selects a proposer(s), Crook County will provide notice of its intent to award the contract to all other proposers and posted to its website. If no written protest is filed by 5:00 p.m. on the seventh day following announcement of the decision, the award will be deemed final. Crook County will not entertain protests submitted after this time period. The written protest must specify the grounds upon which the protest is based. If a timely protest is filed, the decision of Crook County will be considered final only upon issuance of a written notice deciding the merit of the protest. The Crook County Court shall have the authority to settle or resolve a written protest. The award and any written decision regarding the protest will be sent to each proposer.

The protest shall state the reason for the protest, citing the law, rule, regulation, or practice on which the protest is based. A written response will be sent to the protester within ten working days after receipt of the written protest. Prior to the award of a contract, if any proposer files a protest against the award of the contract, the contract may not be awarded until either the protest has been withdrawn or Crook County Court has decided the matter. After the Crook County Court issues a response, an aggrieved Proposer may seek judicial review in the manner provided in ORS 279B.415.

5. REQUIRED SUBMITTALS

Proposals submitted in response to this RFP must include the items and be in the order as listed below. All of the items combined comprise your completed proposal pursuant to this RFP. All signature lines must be signed by an authorized representative. Signature certifies that proposer has read, fully understands, and agrees to be bound by the RFP and all attachments and addenda. It is the proposer's sole responsibility to submit information in fulfillment of the requirements of this RFP. If submittals are not substantially compliant in all material respects with the criteria outlined in the RFP, it will cause the proposal to be deemed non-responsive.

Proposers must submit the following information and are encouraged to include graphics, images, or anything deemed to effectively convey the information requested in the proposal:

Required Submittals	Check Off
Proposal packet, filled in and signed	<input type="checkbox"/>
Narrative section describing how the proposer meets the preferred qualifications described in section 3. Proposers should provide sufficient detail so that the County can make a determination if proposer meets the qualification and if so, how well the proposer meets the qualification.	<input type="checkbox"/>
Narrative section describing in detail how the services offered satisfy the qualifications and statement of work in section 3. Include the following details:	<input type="checkbox"/>
<ul style="list-style-type: none"> List of names of the persons providing the work, with resumes and desired hourly compensation 	<input type="checkbox"/>
<ul style="list-style-type: none"> List of actual or potential conflicts, if any 	<input type="checkbox"/>
<ul style="list-style-type: none"> Narrative of proposer's familiarity with Crook County land use 	<input type="checkbox"/>
<ul style="list-style-type: none"> Narrative of proposer's philosophy and approach to conducting hearings 	<input type="checkbox"/>
Proposer Certificate (Att. 1)	<input type="checkbox"/>
Acknowledgement of Insurance Requirements (Att. 4)	<input type="checkbox"/>

6. RIGHTS RESERVED BY THE COUNTY

The County reserves the right, in its sole discretion, to pursue any or all of the following actions in regard to this RFP:

- Issue addenda.
- Request additional information and/or clarification from the proposers.
- Permit the timely correction of errors and waive minor deviations.
- Issue subsequent proposals based on refinements of concepts proposed in response to the RFP.
- Withdraw this RFP.
- Extend the time for submittal of proposals.
- Select the Proposer that, in the judgment of the County and any evaluation process notwithstanding, is most likely to succeed in providing the services at the level desired by the County.
- Take whatever other action it deems in its best interest.
- The County reserves the right to conduct interviews with proposers to further facilitate ranking pursuant to the criteria.
- To reject any and all proposals not in compliance with all prescribed public contracting procedures and requirements, reject for good cause any proposals upon the finding that it is in the public interest to do so, and waive any and all informalities.
- This invitation does not obligate the County to accept any proposal, negotiate with any proposer, award a contract, or proceed with the services described in response to this RFP;
- All proposals shall become the property of the County and will not be returned to the proposer. All bids and proposals are subject to Oregon Public Records law.

- This RFP does not and shall not commit the County or any of its agents to enter into any agreement, pay any costs incurred in the preparation of any response, or procure or contract for any product, services, or supplies. Responses to this RFP are entirely voluntary and made with this knowledge.
- It is the policy of Crook County to provide equal employment opportunity for all persons in compliance with federal and state laws without regard to race, color, religion, sex, age, national origin, physical or mental disability.

7. HOLD HARMLESS

The proposer agrees to indemnify, defend, and hold the County, its commissioners, agents, officers, and employees, harmless and defend all damages, losses and expenses included, and to defend all claims, proceedings, lawsuits and judgments arising out of or relating from the fault of the proposer, the proposer's agents, representatives or subcontractors in the performance or failure to perform in accordance with instructions to proposers. However, the proposer shall not be required to indemnify any indemnitee to the extent the damage, loss or expense is caused by the indemnitee's negligence.

The proposer shall not permit any lien or claim to be filed or prosecuted against the County or the County's property in connection with the contract and agrees to assume responsibility should lien or claim be filed.

8. PROPOSER'S DECLARATION AND UNDERSTANDING

The undersigned, hereinafter called the Proposer, declares that the only persons or parties interested in this proposal are those named herein, that this proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the County, and that the proposal is made without any connection or collusion with any person submitting another proposal on this Contract.

The Proposer further declares that it has carefully examined the Contract Documents for the services requested and has satisfied itself as to level and scale of work involved, including the fact that the description of the scope of services, as included herein, is brief and is intended only to indicate the general nature of the work. Each proposer must inform itself of the conditions relating to the execution of the work, and it is assumed that each proposer will inspect the departments and be thoroughly familiar with all the Contract Documents. Failure to do so will not relieve the successful Proposer of its obligation to enter into a contract and complete the contemplated work in strict accordance with the Contract Documents.

Each proposer shall inform itself of, and the Proposer awarded a Contract shall comply with, federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, fees, and similar subjects.

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9. PROPOSER'S INFORMATION

The names of the principal officers of the corporation submitting this proposal, or of the partnership, or of all persons interested in this proposal as principals are as follows:

Acknowledgement of Addenda numbers: _____

If sole proprietor or partnership:

IN WITNESS hereto the undersigned has set its hand this _____ day of _____, 2022.

Signature: _____ Title: _____

If Corporation or LLC:

IN WITNESS WHEREOF, the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this _____ day of _____, 2022.

Name of Entity: _____

By: _____
Signature

Print Name

Its: _____

Attachment 1 – Proposer Certificate

PROPOSER CERTIFICATE

This certification must be completed, signed, and returned.
Failure to do so will result in bid disqualification.

PUBLIC CONTRACTING LAWS

Proposer has reviewed and is familiar with and agrees to abide by the terms and provisions required by Crook County Code Chapter 3.12 for public contracts and ORS Chapter 279A – 279B. Proposer further agrees that all of the applicable provisions of Oregon law relating to public contracts are, by this reference, incorporated in and made a part of this invitation.

RESIDENT PROPOSER

A “resident bidder or proposer” is a proposer that has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of this proposal and has a business address in Oregon.

Check One: Bidder ☐ is ☐ is not a resident proposer.

If a non-resident bidder, enter your state of residency: _____.

NON-DISCRIMINATION

ORS 279A.110(1) states: "A bidder . . . may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055." Subsection (4) states "A bidder ... shall certify ... that the bidder ... has not discriminated and will not discriminate, in violation of subsection (1)."

Check One: Proposer states that it:

☐ Has discriminated or will discriminate against minorities, women, or emerging small business enterprises in obtaining any required subcontracts.

☐ Has not discriminated and will not discriminate against minorities, women, or emerging small business enterprises in obtaining any required subcontracts.

OREGON TAX LAWS

For purposes of this certificate, “Oregon Tax Laws” means those programs listed in ORS 305.380(4), which is incorporated herein by this reference. Examples include the state inheritance

tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Employer Payroll Tax, The County Metropolitan Transit District of Oregon "Tri- Met" Employer Payroll Tax, and Tri-Met Self-Employment Tax).

Check One: Proposer states that it:

☐ Has authority and knowledge regarding the payment of taxes, and that Proposer is, to the best of its knowledge, not in violation of any Oregon tax laws.

☐ Does not have authority and knowledge regarding the payment of taxes, and that Contractor is, to the best of its knowledge, not in violation of any Oregon tax laws.

STATEMENT REGARDING CERTIFICATIONS

Proposer understands and acknowledges that the above representations are material and important and will be relied on by the Crook County Court in awarding the contract for which this proposal is submitted. The Proposer understands that any misstatement in these certifications is and shall be treated by the Crook County Court as fraudulent concealment of the true facts relating to the submission of proposals for the contract.

I, the undersigned, a duly authorized representative of the Proposer, hereby certify that the answers to the foregoing Proposer Certificate questions and all statements therein contained are true and correct.

Signature: _____

Date: _____

By: _____

Title: _____

Phone: _____

Email: _____

Company Name: _____

Company Address: _____

PROFESSIONAL SERVICES CONTRACT

CONTRACTOR: _____ *

DATE: _____ *

ADDRESS: _____ * _____ * _____ * _____ *

Street Address

City

State

Zip

PHONE NUMBER: _____ * EMAIL: _____ *

This Professional Services Contract (Agreement) by and between [name] (Contractor) and Crook County, a political subdivision of the State of Oregon (County), entered into this date written above, authorizes Contractor to carry out and complete the services as described below in consideration of the mutual covenants set forth herein.

1. **PROJECT:** The services as described on Exhibit E to this Agreement are to be provided by Contractor in connection with a Project identified as follows: Crook County Hearings Officer.
2. **DURATION:** This Agreement shall run from * (“effective date”) through * unless terminated or extended according to the provisions of this Agreement.
3. **SCOPE OF SERVICES:** Contractor will perform the services as described on Exhibit E attached hereto.
4. **FEE FOR SERVICES:** Contractor’s fee for the services identified on Exhibit E to this Agreement shall be: * and no/100 Dollars (\$*).
5. **EXTRA SERVICES:** Contractor may also perform Extra Services (services not specified in the Scope of Services), provided Contractor and County have agreed in advance and in writing to the scope and fees for such Extra Services.
6. **EXHIBITS:** The following documents which are attached to this Agreement are incorporated herein and by this reference made part hereof:
 - Exhibit A: Required Terms for All Public Contracts
 - Exhibit B: Independent Contractor Status
 - Exhibit C: Protected Information
 - Exhibit D: Business Associate Agreement
 - Exhibit E: Scope of Services
7. **TAX DUTIES AND LIABILITIES:** Contractor shall be responsible for all taxes applicable to any payments received pursuant to this Agreement and is currently and will remain fully compliant with tax laws, as certified in Exhibit A. County shall not withhold, pay, or in any other manner be responsible for payment of any taxes on behalf of Contractor.
8. **SUBMITTAL OF W-9 BEFORE PAYMENT:** Contractor must provide County with a fully completed W-9 form upon execution of the Agreement and prior to beginning services. Contractor will not be paid until a fully completed W-9 form is submitted.

9. REIMBURSEMENT OF EXPENSES: Contractor shall not be entitled to reimbursement by County for any expenses incurred by Contractor unless otherwise agreed in writing.
10. PAYMENT BY COUNTY: Unless otherwise agreed to within this Agreement, County will pay invoices on the 10th or 25th days of the month based upon date the invoice is received.
11. INDEMNIFICATION AND HOLD HARMLESS: The Contractor shall assume all responsibilities for the work, and bear all losses and damages directly or indirectly resulting to the Contractor, the County, or to others on account of the character or performance of the work, unforeseen difficulties, accidents, or any other cause whatsoever. The Contractor shall assume defense of, indemnify and save harmless the County, its officials, agents, and employees from all claims, liability, loss, damage and injury of every kind, nature and description, directly or indirectly resulting from activities in the performance of the Agreement, the ownership, maintenance or use of motor vehicles in connection therewith, or the acts, omissions, operations, or conduct of the Contractor or any subcontractor under the Agreement or any way arising out of the Agreement, irrespective of whether any act, omission or conduct of the County connected with the Agreement is a condition or contributory cause of the claim, liability loss, damage or injury and irrespective of whether act, omission, or conduct of the Contractor or subcontractor is merely a condition rather than a cause of a claim, liability, loss damage or injury. The Contractor shall not be liable for nor be required to defend or indemnify, the County relative to claims for damage or damages resulting solely from acts or omissions of the County, its officials, agents or employees. The absence of or inadequacy of the liability insurance required in section 15 below shall not negate Contractor's obligations in this paragraph.
12. CONTRACTOR STATUS: Contractor certifies it is a "Contractor" under ORS 670.600 and relevant law as it pertains to this contract and as further described in incorporated Exhibit B.
13. CONFORMANCE WITH OREGON PUBLIC CONTRACT LAWS: Contractor shall fully comply with Oregon law for public contracts, as more fully set forth in the Exhibits.
14. TERMINATION:
- 14.1. Either party may terminate this Agreement after giving ten (10) days' prior written notice to the other of intent to terminate without cause. The parties shall deal with each other in good faith during the ten (10) day period after notice of intent to terminate without cause has been given;
- 14.2. With reasonable cause, either party may terminate this Agreement effective immediately after giving written notice of termination for cause. Reasonable cause shall include material violation of this Agreement or any act exposing the other party to liability to others for personal injury or property damage;
- 14.3. Notwithstanding any other provision of this Agreement, County shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until the Crook County Court appropriates funds for this Agreement in County's budget for such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated.

15. INSURANCE:

- 15.1. **GENERAL INSURANCE:** Contractor shall maintain in force for the duration of this agreement a Commercial General Liability insurance policy written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury or property damage. The policy will contain a “per project” Aggregate endorsement. Automobile Liability (owned, non-owned and hired) insurance with limits not less than \$2,000,000 per occurrence shall be maintained. The County, its employees, officials and agents will be named as an Additional Insured where operations are being conducted related to this Agreement, on the General Liability policy as respects to work or services performed under this Agreement to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Contractor or the fault of Contractor’s agents, representatives or subcontractors. This insurance will be primary over any insurance the County may carry on its own. Contractor understands that County is a public entity subject to the requirements of the Oregon Governmental Tort Claims Act, ORS 30.260 et seq. In the event that County’s financial obligations or liabilities are modified by any amendment to the liability limits imposed by the Oregon Governmental Tort Claims Act, Contractor agrees that the limits regarding liability insurance set forth in this section 15.1 will be modified to conform to such limits. Contractor and County shall sign an amendment to this Agreement incorporating such modification.
- 15.2. **WORKERS’ COMPENSATION:** Contractor shall provide and maintain workers’ compensation coverage with limits not less than \$500,000 for its employees, officers, agents, or partners, as required by applicable workers’ compensation laws as defined in ORS 656.027 and ORS 701.035(5). If Contractor is exempt from coverage, a written statement signed by Contractor so stating the reason for exemption shall be provided to the County.
- 15.3. **EVIDENCE OF INSURANCE COVERAGE:** Evidence of the required insurance coverages issued by an insurance company satisfactory to the County shall be provided to the County by way of a County approved certificate of insurance before any work or services commence.
- 15.3.1. **NOTICE OF CANCELLATION OR MATERIAL CHANGE IN COVERAGE:** The certificate of insurance shall contain a requirement that the insurance company notify the County 30 days prior to any cancellation or material change in coverage. If the approved insurance company will not provide this 30-day notice, Contractor shall provide written notice to County within 2 calendar days after Contractor becomes aware that its coverage has been canceled or has been materially changed. Regardless of what circumstances caused Contractor’s insurance coverage to cease or be modified, it is Contractor’s responsibility to notify County. Failure to maintain proper insurance or provide notice of cancellation or modification shall be grounds for immediate termination of this contract.
- 15.4. **EQUIPMENT AND MATERIAL:** Contractor shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the work.
- 15.5. **SUBCONTRACTOR:** The Contractor shall require all subcontractors to provide and maintain general liability, auto liability, professional liability (as applicable), and workers’ compensation insurance with coverage’s equivalent to those required of the general

contractor in this Agreement. Contractor shall require certificates of insurance from all subcontractors as evidence of coverage.

15.6. EXCEPTION OR WAIVERS: Any exception or waiver of these requirements shall be subject to review and approval from the County.

15.7. ABESTOS ABATEMENT: (Only applicable to contracts where asbestos may be present.) The Commercial General Liability policy shall be written on a form that meets the following criteria and must be ASBESTOS SPECIFIC as follows:

- (a) A full occurrence form, or
- (b) A limited occurrence form with at least a 3-year tail, or
- (c) A claim made form with a 3-year tail.

16. GENERAL PROVISIONS:

16.1. ENTIRE AGREEMENT: This Agreement signed by both parties is the final and entire agreement and supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives

16.2. AMENDMENTS: The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of County. No modification of this Agreement shall bind either party unless reduced to writing and subscribed by both parties, or ordered by a Court.

16.3. ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this agreement, in whole or in part, without the prior written approval of County. No such written approval shall relieve Contractor of any obligations of this Agreement, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable as between the original parties to this Agreement as if no such assignment had occurred.

16.4. SUB-AGREEMENTS: If this project is funded in whole or in part with grant funds received by County, Contractor, as a sub-recipient of those funds, shall fully comply with all applicable terms, conditions, and requirements of the Grant Agreement, including but not limited to procurement regulations, property and equipment management and records, indemnity, and insurance provisions.

16.5. SUCCESSORS IN INTEREST: The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.

16.6. AUTHORIZED SIGNATURES REQUIRED: Only those persons authorized by the Crook County Purchasing Rules and Procedures may enter into a binding agreement or contract, including a purchase order, for the purchase or sale of goods or services on the part of the County. All persons doing business with the County shall be responsible for being familiar with the Crook County Purchasing Rules and Procedures and for ensuring that the person purporting to act for the County has been duly authorized.

16.7. NO ENCUMBRANCES: Any property delivered or granted to County under this Agreement, and Contractor's Services rendered in the performance of Contractor's obligations under this Agreement, shall be provided to County free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free

and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

- 16.8. **NO AUTHORITY TO BIND CROOK COUNTY:** Contractor has no authority to enter into contracts on behalf of County. This Agreement does not create a partnership between the parties.
- 16.9. **HOW NOTICES SHALL BE GIVEN:** Any notice given in connection with this Agreement must be in writing and be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address as stated on the work authorization or to Crook County at 300 NE 3rd Street, Prineville, OR 97754, attention "Legal Department."
- 16.10. **GOVERNING LAW AND VENUE:** Any dispute under this Agreement shall be governed by Oregon law, with venue being located in Crook County, Oregon.
- 16.11. **SEVERABILITY:** If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- 16.12. **ACCESS TO RECORDS:** County and its duly authorized representatives shall have access to books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- 16.13. **CONFIDENTIALITY:** During the course of performance of work under this Agreement, Contractor may receive information regarding organizations and County's business practices, employees, clients, etc. Contractor agrees to maintain the confidentiality of such information and to safeguard such information against loss, theft or other inadvertent disclosure
- 16.14. **FEDERAL EMPLOYMENT STATUS:** In the event payment made pursuant to this Agreement is to be charged against federal funds, Contractor hereby certifies that it is not currently employed by the Federal Government and the amount charged does not exceed Contractor's normal charge for the type of services provided.
- 16.15. **COMPLIANCE WITH ALL GOVERNMENT REGULATIONS:** Contractor shall comply with all Federal, State and local laws, codes, regulations and ordinances applicable to the work performed under this Agreement. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Agreement. Damages or costs resulting from noncompliance shall be the sole responsibility of Contractor.
- 16.16. **FORCE MAJEURE:** Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. County may terminate this Agreement upon written notice after determining such delay or default will unreasonably prevent successful performance of the Agreement.
- 16.17. **RIGHTS IN DATA:** All original written material, including programs, card decks, tapes, listings, and other documentation originated and prepared for County pursuant to this Agreement, shall become exclusively the property of County. The ideas, concepts, know-how, or techniques developed during the course of this Agreement by Contractor personnel can be used by either party in any way it may deem appropriate. Material already in

Contractor's possession, independently developed by Contractor, outside the scope of this Agreement, or rightfully obtained by Contractor from third parties, shall belong to Contractor. This Agreement shall not preclude Contractor from developing materials which are competitive, irrespective of their similarity to materials which might be delivered the County pursuant to this Agreement. Contractor shall not, however, use any written materials development under this Agreement in developing materials for others, except as provided in this section.

- 16.18. ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT: In the event of any claim or suit against County on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any material furnished or work or services performed hereunder, Contractor shall defend County against any such suit or claim and hold County harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit.
- 16.19. EQUIPMENT, TOOLS, MATERIALS, AND/OR SUPPLIES: Contractor will provide all equipment, tools, materials or supplies necessary to fulfill Contractor's obligations under the terms of this Agreement.
- 16.20. ATTORNEY FEES: In the event an action, lawsuit, or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall bear its own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding, or appeal.
- 16.21. WAIVER: The failure of either party at any time or from time to time to enforce any of the terms of this Agreement shall not be construed to be a waiver of such term or of such party's right to thereafter enforce each and every provision of the Agreement.
- 16.22. TAX CREDITS: Should Contractor become entitled to tax credits or tax deductions directly attributable to the costs of energy-efficiency attributes included in the project, such as those provided for in IRS Notice 2008-40, Contractor and County agree to share equally in any net tax benefit received by Contractor. For the purposes of this provision: (a) "net tax benefit" means the reasonable estimate of the net reduction in Contractor's tax liability for the current period, including any tax benefit, reduced by Contractor's reasonable costs for applying for and calculating the benefit, and (b) "reduction in Contractor's tax liability" means a reduction in the amounts due or to become due for federal and state income taxes of Contractor, Contractor's subcontractors, its partners, members, and shareholders.
- 16.23. COUNTERPARTS: This Professional Services Contract may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Facsimiles and electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

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IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the date first set forth above.

For Contractor

[name]

By: _____
Signature

Printed Name

Title: _____

Date: _____

For Crook County

CROOK COUNTY COURT

Seth Crawford, County Judge

Date: _____

Jerry Brummer, County Commissioner

Date: _____

Brian Barney, County Commissioner

Date: _____

EXHIBIT A

REQUIRED TERMS FOR ALL PUBLIC CONTRACTS

1. PAYMENTS AND DEBTS:

- 1.1. Contractor shall promptly, as due, make payment to:
 - 1.1.1. Any person, co-partnership, 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 Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that 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;
 - 1.1.2. All persons supplying to Contractor labor or material for the performance of the work provided for in the Agreement;
 - 1.1.3. All contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Agreement; and
 - 1.1.4. The Department of Revenue all sums withheld from employees under ORS 316.167.
- 1.2. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished under this Agreement.

2. EMPLOYEES:

- 2.1. Contractor and subcontractors shall either be employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 2.2. Contractor shall comply with the prohibition on wage discrimination of ORS 652.220; failure to do so is a material element of the contract and a breach that entitles County to terminate this Agreement for cause.
- 2.3. For all work under this Agreement, Contractor may not employ an employee 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 otherwise, and in such cases, Contractor shall pay the employee at least time-and-a-half pay for:
 - (a) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or all overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and
 - (b) All work the employee performs on Saturday and on any legal holiday specified in ORS 279B.020;
- 2.3.1. If this Agreement is for services, Contractor shall pay employees at least time-and-a-half pay for work the employees perform under this Agreement on the legal holidays specified in a collective bargaining agreement or in 279B.020 (1)(b)(B) to (G) and for all time the employees work in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater;
- 2.3.2. If this Agreement is for personal services, as described in ORS 279A.055, Contractor shall pay its employees who work under this Agreement at least time-and-a-half for all overtime the employees work in excess of 40 hours in any one week, unless said employees are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime;
- 2.3.3. If this Agreement is for services at a county fair, or for another event that Crook County Fair Board authorizes, Contractor shall pay employees who work under this Agreement at least time-and-a-half for work in excess of 10 hours in any one day or 40 hours in any one week.
- 2.4. Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
- 2.5. Contractor shall give notice in writing to employees who work under this Agreement, either at the time of hire or before work begins on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that Contractor may require the employees to work.

3. OTHER PROVISIONS:

- 3.1. By executing this Agreement, Contractor represents and warrants that it has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318; Contractor further covenants to continue with said compliance during the term of this Agreement. Noncompliance with this provision is a default for which County may terminate the Agreement, in whole or part, and seek damages under the terms of this Agreement or applicable law.
- 3.2. If this Agreement involves lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

EXHIBIT B

INDEPENDENT CONTRACTOR STATUS

Contractor states and represents that contractor is an Independent Contractor as that term is defined in Oregon Revised Statute 670.600 and more specifically represents, states and agrees that in providing the services and scope of work specified in this Agreement:

1. Contractor provides services for remuneration; and
2. Contractor is free from direction and control over the means and manner of providing the services and scope of work subject only to the right of County to specify the desired results; and
3. Contractor is customarily engaged in an independently established business; and
4. Contractor is licensed within the state of Oregon to provide any services for which a license is required under ORS Chapter 671 or 701 and is responsible for obtaining other licenses or certificates necessary to provide the service or scope of work; and
5. Contractor complies with at least three of the following requirements:
 - (a) A business location is maintained that is separate from the business or work location of County; or is in a portion of the Contractor's residence and that portion is used primarily for the business.
 - (b) The Contractor bears the risk of loss related to the provision of services or scope of work such as entering into a fixed price contract, defective work is required to be corrected, the services provided are warranted or indemnification agreements, liability insurance and performance bonds and errors and omissions insurance are provided.
 - (c) Contracted services for two or more different persons or entities within a twelve month period have been obtained, or routinely engaged in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
 - (d) Significant investment in the business has been made such as purchasing tools or equipment, paying for premises or facilities where services are provided, paying for licenses, certificates or specialized training.
 - (e) Possesses authority to hire other persons to assist in providing their services and has the authority to fire those persons.
6. Contractor will immediately inform County in the event that it fails to conduct its services in one or more particulars as represented in 1 through 5 above.

EXHIBIT C

PROTECTED INFORMATION

If Contractor obtains any personal information as defined in ORS 646A.602(11) related to this Agreement or concerning any County employee, Contractor agrees to provide appropriate safeguards to protect the security of this information. Contractor shall have provided appropriate safeguards by meeting or exceeding the requirements stated in ORS 646A.622. Furthermore:

1. **“Protected Information”** shall be defined as *data or information* that has been designated as private or confidential by law or by the County. Protected Information includes, but is not limited to, employment records, medical records, personal financial records (or other personally identifiable information), trade secrets, and classified government information. To the extent there is any uncertainty as to whether any data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the County or proper legal authority.
2. **Data Confidentiality.** Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action of unauthorized disclosure that could result in substantial harm to the County or an individual identified with the data or information in Contractor’s custody or access.

To the extent that Contractor may have access to County protected health information (as the same is defined in the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and the implementing regulations known and referred to as Privacy Rule, Security Rule, Enforcement Rule and Breach Notification Rule, referred to herein collectively as “HIPAA”), Contractor agrees to protect such information in compliance with HIPAA and represents that it has the processes, systems and training to assure compliance with the same.

3. **Data and Network Security.** Contractor agrees at all times to maintain commercially reasonable network security that, at a minimum, includes: network firewall provisioning, intrusion detection/prevention and periodic third party penetration testing. Likewise Contractor agrees to maintain network security that at a minimum conforms to current standards set forth and maintained by the National Institute of Standards and Technology, including those at: <http://checklists.nist.gov/repository>. Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority.
4. **Security Breach.** In the unlikely event of a security breach or issue, Contractor will notify the appropriate County contact no later than one hour after they are aware of the breach. Contractor will be responsible for all remedial action necessary to correct the breach; provided however, that Contractor will not undertake litigation on behalf of the County without prior written consent.
5. **Data Storage and Backup.** Contractor agrees that any and all County data will be stored, processed, and maintained solely on designated servers and that no County data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by a County officer with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by the County Information Security Officer for any general or specific case.

Contractor agrees to store all County backup data stored as part of its backup and recovery processes in encrypted form, using no less than AES 256.

6. **Data Re-Use.** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor further agrees that no County data of any kind shall be revealed, transmitted, exchanged or otherwise passed to other Contractor or interested parties except on a case-by-case basis as specifically agreed to in writing by a County officer with designated data, security, or signature authority.
7. **PCI Compliance.** Contractor agrees to comply with PCI DSS (Payment Card Industry Data Security Standard). As evidence of compliance, Contractor shall provide upon request a current attestation of compliance signed by a PCI QSA (Qualified Security Assessor).
8. **End of Agreement Data Handling.** Contractor agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all County data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of an agent of County whichever shall come first.
9. **Mandatory Disclosure of Protected Information.** If Contractor becomes compelled by law or regulation (including securities' laws) to disclose any Protected Information, Contractor will provide County with prompt written notice so that County may seek an appropriate protective order or other remedy. If a remedy acceptable to County is not obtained by the date that Contractor must comply with the request, Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and the Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.
10. **Remedies for Disclosure of Confidential Information.** Contractor and County acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage County in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give County the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Contractor further grants County the right, but not the obligation, to enforce these provisions in Contractor's name against any of Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.
11. **Non-Disclosure.** Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants and auditors on a need-to-know basis only, provided that all such subcontractors, agents, consultants and auditors have written confidentiality obligations to both Contractor and County.
12. **Criminal Background Check.** County shall perform criminal background checks on all talent assigned to this project before a person is allowed to work on any of the County's Criminal Justice Information System (CJIS) protected data, software systems or facilities.
13. **Survival.** The confidentiality obligations shall survive termination of any agreement with Contractor for a period of ten (10) years or for so long as the information remains confidential, whichever is longer and will inure to the benefit of County.

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BA Agreement”) between County of Crook (County) and Contractor is adopted to ensure that Contractor will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of County in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended (“HIPAA”), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

A. General Provisions

1. **Meaning of Terms.** The terms used in this BA Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this BA Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this BA Agreement shall be interpreted to permit compliance with HIPAA.

B. Obligations of Business Associate

Contractor agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this BA Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with Subpart C of 45 CFR Part 164 to prevent use or disclosure of PHI other than as provided for by this BA Agreement;
3. Report to County any use or disclosure of PHI not provided for by this BA Agreement of which it becomes aware, including any security incident (as defined in 45 CFR 164.304) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to County without unreasonable delay but in no case later than 60 days after discovery of the breach;
4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information;
5. Make available PHI in a designated record set to County as necessary to satisfy County’s obligation under 45 CFR 164.524 in no more than 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by County, or take other measures necessary to satisfy County’s obligations under 45 CFR §164.526 in no more than 30 days of a request;
7. Maintain and make available information required to provide an accounting of disclosures to County or an individual who has a right to an accounting within 60 days and as necessary to satisfy County’s obligations under 45 CFR §164.528;
8. To the extent that Contractor is to carry out any of County’s obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E of 45 CFR Part 164 that apply to County when it carries out that obligation;

9. Make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA rules;
10. County shall notify Contractor of any restriction on the use or disclosure of PHI that County has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI; and
11. If County is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Contractor agrees to assist County in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of County's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of County agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting County of any red flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to County of any threat of identity theft as a result of the incident.
12. If Contractor is part of a larger organization, Contractor will implement policies and procedures to protect PHI from unauthorized access by the larger organization.

C. Permitted Uses and Disclosures by Business Associate

The specific uses and disclosures of PHI that may be made by Contractor on behalf of County are limited to:

1. The review of patient care information in the course of Contractor conducting risk and compliance assessment activities, or providing County with a Control Activity Gap Analysis, or the review of PHI and other information necessary to assist County in developing its HIPAA compliance program; and
2. Other uses or disclosures of PHI as permitted by the HIPAA rules as necessary to perform the services set forth in the Agreement.
3. Uses or disclosures of protected health information as required by law.

D. Termination

1. County may terminate this Agreement if County determines that Contractor has violated a material term of the BA Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this BA Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement, if feasible.
3. Upon termination of this Agreement for any reason, Contractor shall return to County or destroy all PHI received from County, or created, maintained, or received by Contractor on behalf of County that Contractor still maintains in any form. Contractor shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this BA Agreement will extend to such PHI.
4. The obligations under section D are perpetual and shall survive termination of this Agreement.

Attachment 3 – Scope of Services

Contractor will perform the following services:

Conduct all assigned code compliance and contested case hearings and render decisions authorized by and pursuant to requirements of the Crook County Code, Oregon Revised Statutes, Oregon Administrative Rules, and the common law of the State of Oregon.

Notify the appropriate Code Compliance Officer, Director, or designee, no later than five (5) business days after receipt of notice of assigned cases whether Contractor has a conflict of interest, bias, or pre-hearing contacts, with respect to the case of the parties thereof.

- (a) If such conditions exist, Contractor will state whether the conflict of interest is apparent or real, or otherwise explain the bias or contact.
- (b) Where there is a conflict of interest, bias, or pre-hearing contact, the Contractor may decline an assignment, or the County may withdraw the assignment.
- (c) The County will not be charged for the Contractor's time in determining whether these conditions may exist, nor will the County be charged for any time devoted to the case which one of these conditions is later found to exist.

Submit a written final decision, including the components required by Crook County Code, based upon the record, to the parties to the code compliance or contested case hearing within the timeframe established by Crook County Code. Perform any and all research and preparation necessary to perform the duties of the Hearings Officer. Contractor will announce the Contractor's decisions, including scheduling, motions, and final decisions, by providing to all parties as described in the Crook County Code.

The Contractor will keep accurate records in a format reasonably approved by the County for the purpose of compensation and will submit said record to the appropriate department with a bill for payment of services.

The Contractor will have the right to reuse Contractor's work or other Hearings Officers' decisions.

County Services. County will provide Contractor, at County's expense, with material and services described as follows:

No later than five (5) days prior to the hearing on the land use or code violation matters, County agrees to provide Contractor with copies of the files for each matter referred to Contractor for hearing.

County agrees to provide Contractor with audio recording and sound projection equipment and related storage medium on which to make a formal record of the land use hearings.

The County provided equipment and storage medium will be in working order and available at the times and location designated by County for the conduct of the hearings.

From and after the date that the Contractor's written decision becomes the final decision on the land use application or code compliance violation, County will defend, save, hold harmless and indemnify Contractor and its officers and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to such decision.

Attachment 4 – Acknowledgement of Insurance Requirements

Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below. Insurance coverage must apply on a primary or non-contributory basis. All insurance policies, except Professional Liability, shall be written on an occurrence basis and be in effect for the term of the contract. Policies written on a "claims made" basis must be approved and authorized by Crook County.

Workers Compensation insurance in compliance with ORS 656.017, requiring contractor and all subcontractors to provide workers' compensation coverage for all subject workers, or provide certification of exempt status. Worker's Compensation Insurance to cover claims made under Worker's Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with Coverage B Employer's Liability coverage all at the statutory limits. In the absence of statutory limits, the limits of said Employers Liability coverage shall be not less than \$500,000 each accident, disease, and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured's right of subrogation against County.

Professional Liability insurance with an occurrence combined single limit of not less than:

Per Occurrence limit:	Annual Aggregate limit
\$1,000,000	\$2,000,000

Professional Liability insurance covers damages caused by error, omission, or negligent acts related to professional services provided under the contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail coverage" for claims made within two years after the contract work is completed. **Required by County**

Commercial General Liability insurance with a combined single limit of not less than:

Per Single Claimant and Incident	All Claimants Arising from Single Incident
\$1,000,000	\$2,000,000

Commercial General Liability insurance includes coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products, completed operations and contractual liability. The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance of County, its officers, employees, or agents. Each such policy obtained by contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide County with the right, but not the obligation, to engage its own attorney for the purpose of defending any legal action against County, its officers, agents, or employees, and that contractor shall indemnify County for costs and expenses, including reasonable attorneys' fees, incurred or arising out of the defense of such action. The policy shall be endorsed to name Crook County, and its officers, agents, employees, and volunteers as an additional insured. The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit. The contractor shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the County are maintained. Construction contracts may include aggregate limits that apply on a "per location" or "per project" basis. The additional insurance protection shall extend equal protection to County as to contractor or subcontractors and shall not be limited to vicarious liability only or any similar limitation. To the extent any aspect of this Paragraph shall be deemed unenforceable,

then the additional insurance protection to County shall be narrowed to the maximum amount of protection allowed by law. **Required by County**

Automobile Liability insurance with a combined single limit of not less than:

Per Occurrence \$1,000,000

Automobile Liability insurance includes coverage for bodily injury and property damage resulting from operation of a motor vehicle. Commercial Automobile Liability Insurance shall provide coverage for any motor vehicle (symbol 1 on some insurance certificates) driven by or on behalf of Contractor during the course of providing services under this contract.

Commercial Automobile Liability is required for contractors that own business vehicles registered to the business. Examples include: plumbers, electricians, or construction contractors. An Example of an acceptable personal automobile policy is a contractor who is a sole proprietor that does not own vehicles registered to the business. **Required by County**

Additional Requirements. Contractor shall pay all deductibles and self-insured retentions. A cross-liability clause or separation of insured's condition must be included in all commercial general liability policies required by the contract. Contractor's coverage will be primary in the event of loss.

Certificate of Insurance Required. Contractor shall furnish a current Certificate of Insurance to the County with the signed contract. Contractor shall notify the County in writing at least thirty (30) days in advance of any cancellation, termination, material change, or reduction of limits of the insurance coverage. The Certificate shall also state the deductible or, if applicable, the self-insured retention level. Contractor shall be responsible for any deductible or self-insured retention.

I certify that I acknowledge the above insurance information as a requirement to enter into a contract with Crook County. I also certify that I carry the required insurance limits as stated in this Exhibit or can, if selected as a result of this RFP, obtain the required insurance and provide proof of the required insurance certificates prior to signature and execution of the contract.

Signature: _____

Date: _____

Printed Name and Title: _____