

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 14-06-24-06

IN THE MATTER OF DELEGATING
AUTHORITY TO THE COUNTY
ADMINISTRATOR TO EXECUTE A FIVE-
YEAR RENEWABLE CONTRACT WITH
TELMATE LLC TO PROVIDE INMATE
TELEPHONE AND VIDEO VISITATION
SERVICES AT THE LANE COUNTY ADULT
CORRECTIONS FACILITY

WHEREAS, the Lane County Sheriff's Office is responsible for inmate telephone services; and

WHEREAS, the Lane County Sheriff's Office wishes to provide inmate telephone and video visitation services; and

WHEREAS, the Lane County Sheriff's Office conducted a thorough Request for Proposals process; and

WHEREAS, results from that process indicate that revenue can be realized by providing these services; and

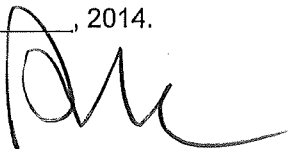
WHEREAS, Telmate LLC was selected as the winning proposer; and

WHEREAS, the Lane County Sheriff's Office wishes to enter into a five-year contract with Telmate LLC, with possible renewal for five additional years.

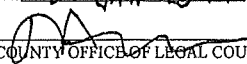
NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

That County Administrator is delegated authority to execute a contract with Telmate LLC to provide inmate telephone and video visitation services that is substantially similar to the agreement attached, and to execute up to five additional one-year renewals provided that contractor continues to provide its services in accordance with the contract.

ADOPTED this 24th day of June, 2014.



Pat Farr, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 23 JUNE 2014


LANE COUNTY OFFICE OF LEGAL COUNSEL



LANE COUNTY

GOODS AND/OR SERVICES CONTRACT

Contract Title: _____

Contract No.: _____
(PLACE THIS NUMBER ON ALL INVOICES)

This Contract is entered into by and between Lane County, Oregon, a political subdivision of the State of Oregon ("County"), and _____ ("Contractor").

The County and Contractor agree as follows:

1. STATEMENT OF WORK. Contractor will furnish or perform _____ for the County as described in Exhibit _____ in accordance with the requirements of the Contract.
2. CONTRACT DOCUMENTS
 - 2.1 The Contract comprises this document and all attachments, including the exhibits listed below. Contractor must comply with all terms and conditions of the Contract. In the case of any conflict between the terms and conditions of this document and any of the attachments, the terms and conditions of this document prevail.
 - 2.2 With this document, the following exhibits are incorporated into the Contract:
Exhibit A, Lane Manual Ch. 21, Sec. 130 Standard Contract Provisions
Exhibit B, Insurance Coverages Required
Exhibit C, _____
Exhibit D, _____
Exhibit E, _____
Exhibit F, _____
Exhibit G, _____
Exhibit H, _____
 - 2.3 This Contract contains the entire agreement of the County and Contractor with respect to the subject matter of this Contract, and supersedes all prior negotiations, agreements and understandings.
3. CONSIDERATION AND PAYMENT
 - 3.1 In consideration for Contractor's performance, the County agrees to pay _____ payable _____.
 - 3.2 Any payments by the County to Contractor will customarily be made within thirty (30) days of receipt of a properly submitted and approved invoice from Contractor.
 - 3.3 The County is not obligated to pay any amount greater than that stated above.
4. TIME. The Contract period begins _____ and ends _____ after commencement.

5. CONTRACTOR'S STATUS

- 5.1 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).
- 5.2 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 the 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.
- 5.3 Contractor will not be eligible for any Federal Social Security, State Workers' Compensation, unemployment insurance or Public Employees Retirement System benefits from this contract payment.
- 5.4 Contractor is not currently employed by the County, and will not be under the direct control of the County.
- 5.5 The 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.

6. INDEMNIFICATION AND INSURANCE

- 6.1 Contractor agrees to indemnify, defend, and hold the County, its Commissioners, agents, officers, and employees harmless from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of the activities of, or failure to perform by Contractor or its officers, employees, subcontractors, or agents under this Contract.
- 6.2 Contractor must provide and maintain all insurance called for on the page entitled "Insurance Coverages Required," including the required Additional Insured policy endorsements, and must notify Lane County Risk Management of any material reduction or exhaustion of aggregate limits.
- 6.3 Contractor, its subcontractors, and all employers working under this Contract are subject employers under the Oregon Worker's Compensation Law, and must comply with ORS 656.017 and provide Worker's Compensation coverage for all their subject workers unless exempt under ORS 656.126.
- 6.4 Contractor may not cancel, materially change, or not renew insurance coverages. If any policy is canceled before final payment by the 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, the County reserves the right to procure such insurance and to charge the cost to Contractor.
- 6.5 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.

7. MODIFICATION. Modifications or amendments to this Contract are effective only if in writing and executed by both parties.

8. TERMINATION

- 8.1 The parties may jointly agree to terminate this Contract and upon the terms of such termination. The County may terminate this Contract at any time for any reason or for no reason with no liability on its part, except to pay for services previously provided by giving Contractor 30 days written notice.
- 8.2 Force Majeure. Neither the 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. The 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.

9. DISPUTES

- 9.1 Dispute Resolution. The parties are required to exert every effort to cooperatively resolve any disagreements that may arise under this 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.
- 9.2 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, shall be governed by, construed, and enforced in accordance with the laws of the State of Oregon without regard to principles of conflict of laws. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether governmental immunity or otherwise, from any claim or from the jurisdiction of any court.
- 9.3 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.

10. MISCELLANEOUS PROVISIONS

- 10.1 Waiver. Failure of the County to enforce any provision of the Contract does will not constitute a waiver or relinquishment by the County of the right to such performance in the future nor of the right to enforce that or any other provision of this Contract.
- 10.2 Severability. If any provision of this Contract is declared by a court to illegal or in conflict with any law, the validity of the remaining terms and provisions will not be 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.
- 10.3 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.
- 10.4 Time is of the Essence. The parties agree that time is of the essence with respect to all provisions of this Contract.
- 10.5 Protection of 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.

11. CONTRACTOR'S CERTIFICATION. By execution of this Contract, Contractor certifies under penalty of perjury that Contractor is in compliance with the requirements of Lane Manual Ch. 21, Sections 130(12) and (18) regarding tax law compliance, non-discrimination, and licensing.

CONTRACTOR:

(Contractor's legal name)

By: _____

Title: _____

Date: _____

Address:

Tax ID No.: _____

COUNTY:

LANE COUNTY, OREGON

By: _____

County Administrator

Date: _____

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

EXHIBIT A – LANE MANUAL CH. 21, SEC. 130 STANDARD CONTRACT PROVISIONS

21.130 Standard Contract Provisions. The following standard public contract clauses must be included expressly or by reference in every contract of the County.

- (1) Contractor shall make payment promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the work provided for in the contract, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.
- (2) Contractor shall pay promptly all contributions or amounts due to the State Industrial Accident Fund and the State Unemployment Compensation Fund from Contractor or any subcontractor in connection with the performance of the contract.
- (3) Contractor shall 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.
- (4) Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- (5) Contractor shall make payment promptly, as due, to any person, co-partnership, association or corporation furnishing medical, surgical, hospital or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing payment for such service.
- (6) With certain exceptions listed below, Contractor shall not require or permit any person to work more than 10 hours in any one day, or 40 hours in any one week except in case of necessity, emergency, or where public policy absolutely requires it, and in such cases Contractor shall pay the person at least time and a half for:
 - (a) All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday, or
 - (b) All overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday, and
 - (c) All work performed on the days specified in ORS 279B.020(1) for non-public improvement contracts or ORS 279C.540(1) for public improvement contracts.

For personal/professional service contracts as designated under ORS 279A.055, instead of (a) and (b) above, Contractor shall pay a laborer at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Sections 201 to 209, from receiving overtime.

Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression. For contracts other than construction or public improvements, this subsection (6) does not apply to contracts for purchase of goods or personal property.

Contractor shall give written notice to employees who work on a public contract of the number of hours per day and days per week that the employees may be required to work. This notice must be given in writing either at the time of hire or before commencement of work on the contract, or must be posted as a notice in a location frequented by employees.

- (7) Contractor, any subcontractors, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and must comply with ORS 656.017, unless exempt under ORS 656.027.
- (8) Unless otherwise provided by the contract or law, the County has a right to exercise the following remedies for Contractor's failure to perform the scope of work or failure to meet established performance standards:
 - (a) Reduce or withhold payment;
 - (b) 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
 - (c) Declare a default, terminating the public contract and seeking damages and other relief available under the terms of the public contract or other applicable law.
- (9) The contract may be canceled at the election of the County for any substantial breach, willful failure or refusal on the part of Contractor to faithfully perform the contract according to its terms. The 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.
- (10) 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, the County will have no further obligation to Contractor for payments beyond the termination date. This provision does not permit the County to terminate the contract in order to provide similar services or goods from a different contractor.
- (11) Unless otherwise provided by the contract or law, Contractor agrees that the County and its duly authorized representatives may have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Agreement 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 period of (6) six years after the County makes final payment on this Agreement. Copies of applicable records must be made available upon request, and payment of copy costs is reimbursable by the County.
- (12) By execution of this contract, Contractor certifies, under penalty of perjury that:
 - (a) To the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4), and
 - (b) Contractor has not discriminated against minority, women or small business enterprises or one that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.
- (13) Contractor shall 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 Agreement, except if the County has good cause and the contract provides otherwise.
- (14) Contractor shall not assign this contract or any payments due hereunder without the proposed assignee being first approved and accepted in writing by County.

- (15) Contractor shall make all provisions of the contract with the County applicable to any subcontractor performing work under the contract.
- (16) The 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.
- (17) All modifications and amendments to the contract will only be effective only if in writing and executed by both parties.
- (18) 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.
- (19) Unless otherwise provided, data which originates from this contract constitutes "works for hire" as defined by the U.S. Copyright Act of 1976 and is owned by the County. Data includes, but is not limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights. Data which does not originate from this contract, but which is delivered under the contract, is transferred to the County with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided that such license will be limited to the extent which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise the County, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. Contractor shall give the County prompt written notice of any notice or claim of copyright infringement received by Contractor with respect to any data delivered under this contract. The County will have the right to modify or remove any restrictive markings placed upon the data by Contractor.
- (20) If as a result of this contract, Contractor produces a report, paper, publication, brochure, pamphlet or other document on paper which uses more than a total 500 pages of 8 1/2" by 11" paper, Contractor shall conform to the Lane County Recycled Paper Procurement and Use policy, LM 2.440 through 2.448, by using recycled paper with at least 25% post-consumer content which meets printing specifications and availability requirements.
- (21) The Oregon Standard Specifications for Construction adopted by the State of Oregon, and the Manual on Uniform Traffic Control Devices, each as is currently in effect, are applicable to all road construction projects except as modified by the bid documents.
- (22) As to contracts for lawn and landscape maintenance, Contractor shall salvage, recycle, compost or mulch yard waste material in an approved site, if feasible and cost-effective.
- (23) When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, Contractor shall 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.

Exhibit B

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/\$3 million aggregate
- ☐ \$2 million per occurrence/\$4 million aggregate
- ☐ \$ Amount approved by risk and required by contract

Aggregate limits:

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

FORM 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 the Risk Manager. 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).

LIMITS

- ☒ \$2 million combined single limit per accident for bodily injury and property damage
- ☐ \$ Amount approved by risk and required by contract

☐ **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 CLAUSE** The general and auto liability insurance coverage's required for performance of this contract shall be **endorsed** 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 endorsement, and the policy must be endorsed to show cancellation notices to the Lane County department who originated the contract. Coverage shall 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

☒ Limits of \$500,000

☐ Limits of \$1 million

☐ **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)

Any questions concerning insurance and indemnity should be directed to Lane County Risk Management at 541-682-3971.



GOODS AND/OR SERVICES CONTRACT

Contract Title: Inmate Telephone and Video Visitation Services

Contract No.: [not used]

This Contract is entered into by and between Lane County, Oregon, a political subdivision of the State of Oregon ("County"), and Telmate LLC ("Contractor").

The County and Contractor agree as follows:

1. STATEMENT OF WORK

- 1.1 Contractor will provide, install, operate, and maintain an inmate telephone and video visitation system at the Lane County Adult Correction and Community Corrections facilities in compliance with the requirements of Exhibit B and the terms of this Contract.
- 1.2 Contractor's Work is further described in Exhibit C, and includes, but is not limited to:
 - .1 Complete system installation, including coordination, related services, and data lines, as described in the Proposer's Statement, Price Proposal, and Appendices B, C, E, and K of Exhibit C. The approximate quantities, subject to verification and agreement following site examination, include:
 - Up to 42 Inmate Phones
 - Up to 36 visitation phones
 - Up to 1 cordless Unicom Phone
 - Up to 2 TTY
 - Up to 4 Public Payphone
 - Up to 25 Inmate Telmate Stations
 - Up to 5 Lobby Telmate Stations
 - Up to 1 Computer Workstation
 - Up to 2 Lobby Kiosk
 - Up to 1 Booking Kiosk
 - Up to 1 Visitation Scheduling
 - Up to 1 Commissary Integration
 - Up to 1 JMS Integration
 - Up to 1 Inmate Accounting Integration
 - .2 Ability to interface with Lane County EIS system as described in the Proposer's Statement of Exhibit C.
 - .3 Implementation in accordance with Appendix E of Exhibit C.
 - .4 System operation and performance in accordance with the Proposer's Statement, Price Proposal, and Appendices B, C, G, and H of Exhibit C.

2. CONTRACT DOCUMENTS

- 2.1 The Contract comprises this document and all attachments, including the exhibits listed below. Contractor must comply with all terms and conditions of the Contract. In the event of a conflict between the requirements of this document and any Exhibit, the requirements in this document will prevail.
- 2.2 With this document, the following exhibits are incorporated into the Contract:
Exhibit A, Lane Manual Ch. 21, Sec. 130 Standard Contract Provisions

Exhibit B, Insurance Coverages Required

Exhibit C, Proposal for Lane County

Exhibit D, Request for Proposals - Inmate Telephone and Video Visitation Services

- 2.3 This Contract contains the entire agreement of the County and Contractor with respect to the subject matter of this Contract, and supersedes all prior negotiations, agreements and understandings.

3. CONSIDERATION AND PAYMENT

- 3.1 In consideration for Contractor's performance, the County will receive a fifty-nine percent (59%) commission as described in Appendix A to Exhibit C. Commissions will be based on revenues from all completed calls, excluding taxes, government-imposed fees, or third-party payment charges outside the control of Contractor.
- 3.2 The commission will be paid by Contractor to the County by check on a monthly basis, unless another manner of transmitting payment is agreed in writing. Payment will be made no later than forty five (45) days following the month in which the revenues were generated from Contractor's equipment. Payments check will be made payable to Lane County and mailed to the County's address stated below.

4. EFFECTIVE DATE AND DURATION

- 4.1 Upon the signature of all parties, this Contract is effective on July 1, 2014.
- 4.2 Unless extended or terminated earlier in accordance with its terms, this Contract will terminate June 30, 2019.
- 4.3 The County, at its sole option, may extend the termination of this Contract for up to five (5) additional one-year periods following the initial term of the Contract stated above.

5. CONTRACTOR'S STATUS

- 5.1 The performance of this Contract is 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.
- 5.2 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 the 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 on account of Contractor or Contractor's subcontractor, if any.
- 5.3 Contractor shall not be eligible for any Federal Social Security, State Workers' Compensation, unemployment insurance or Public Employees Retirement System benefits from this contract payment.
- 5.4 Contractor is not currently employed by the County, and will not be under the direct control of the County.
- 5.5 The 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.

6. INDEMNIFICATION AND INSURANCE

- 6.1 To the extent permitted by the Oregon Constitution, and to the extent permitted by the Oregon Tort Claims Act, and to the extent otherwise provided for in private contracts of insurance, the parties agree to indemnify, defend, and hold each other, their 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 the other party's negligence in the performance of or failure to perform under this subcontract. No party to this Contract will be required to indemnify or defend the other party for any liability arising solely out of wrongful acts of its own officers, employees or agents.

- 6.2 Contractor must provide and maintain all insurance called for on the page entitled "Insurance Coverages Required," including the required Additional Insured policy endorsements, and must notify Lane County Risk Management of any material reduction or exhaustion of aggregate limits.
 - 6.3 Contractor, its subcontractors, and all employers working under this Contract are subject employers under the Oregon Worker's Compensation Law, and must comply with ORS 656.017 and provide Worker's Compensation coverage for all their subject workers unless exempt under ORS 656.126.
 - 6.4 Contractor may not cancel, materially change, or not renew insurance coverages. If any policy is canceled before final payment by the 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, the County reserves the right to procure such insurance and to charge the cost to Contractor.
 - 6.5 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.
7. MODIFICATION. No modification or amendment to this Contract will bind either party unless in writing and signed by both parties.
8. TERMINATION
- 8.1 The parties may jointly agree to terminate this Contract and upon the terms of such termination. The County may terminate this Contract at any time for any reason or for no reason with no liability on any part, except to pay for services previously provided by giving Contractor 30 days written notice.
 - 8.2 Force Majeure. Neither the 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. 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. The 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.
9. DISPUTES
- 9.1 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.
 - 9.2 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, shall be governed by, construed, and enforced in accordance with the laws of the State of Oregon

without regard to principles of conflict of laws. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether governmental immunity or otherwise, from any claim or from the jurisdiction of any court.

- 9.3 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.

10. MISCELLANEOUS PROVISIONS

- 10.1 Waiver. Failure of the County to enforce any provision of the Contract does will not constitute a waiver or relinquishment by the County of the right to such performance in the future nor of the right to enforce that or any other provision of this Contract.
- 10.2 Severability. If any provision of this Contract is declared by a court to illegal or in conflict with any law, the validity of the remaining terms and provisions will not be 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.
- 10.3 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.
- 10.4 Time is of the Essence. The parties agree that time is of the essence with respect to all provisions of this Contract.
- 10.5 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 646A.622 seq.) throughout the term of this Contract.
- 10.6 Non-Assignment. Contractor may not assign or transfer its interest in this Contract without prior written approval of the County.
- 10.7 Binding on Successors and Assigns. The provisions of this Contract will be binding upon and inure to the benefit of the parties to this Contract, their respective successors, and permitted assigns.
- 10.8 No Third-Party Beneficiaries. The County and Contractor are the only parties to this Contract and 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.
- 10.9 Multiple Counterparts. This Contract and any subsequent amendments may be executed in several counterparts, 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.

11. CONTRACTOR'S CERTIFICATION. By execution of this Contract, Contractor certifies under penalty of perjury that Contractor is in compliance with the requirements of Lane Manual Ch. 21, Sections 130(12) and (18) regarding tax law compliance, non-discrimination, and licensing.

CONTRACTOR:

COUNTY:

LANE COUNTY, OREGON

(Contractor's legal name)

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address:

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

Tax ID No.: _____

DRAFT

EXHIBIT A – LANE MANUAL CH. 21, SEC. 130 STANDARD CONTRACT PROVISIONS

21.130 Standard Contract Provisions. The following standard public contract clauses must be included expressly or by reference in every contract of the County.

- (1) Contractor shall make payment promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the work provided for in the contract, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.
- (2) Contractor shall pay promptly all contributions or amounts due to the State Industrial Accident Fund and the State Unemployment Compensation Fund from Contractor or any subcontractor in connection with the performance of the contract.
- (3) Contractor shall 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.
- (4) Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- (5) Contractor shall make payment promptly, as due, to any person, partnership, association or corporation furnishing medical, surgical, hospital or other needed care and attention, incident to sickness or injury, to the employees of Contractor, all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing payment for such service.
- (6) With certain exceptions listed below, Contractor shall not require or permit any person to work more than 10 hours in any one day, or 40 hours in any one week except in case of necessity, emergency, or where public policy absolutely requires it, and in such cases Contractor shall pay the person at least time and a half for:
 - (a) All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday, or
 - (b) All overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday, and
 - (c) All work performed on the days specified in ORS 279B.020(1) for non-public improvement contracts or ORS 279C.540(1) for public improvement contracts.

For personal/professional service contracts as designated under ORS 279A.055, instead of (a) and (b) above, Contractor shall pay a laborer at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Sections 201 to 209, from receiving overtime.

Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression. For contracts other than construction or public improvements, this subsection (6) does not apply to contracts for purchase of goods or personal property.

Contractor shall give written notice to employees who work on a public contract of the number of hours per day and days per week that the employees may be required to work. This notice must be given in writing either at the time of hire or before commencement of work on the contract, or must be posted as a notice in a location frequented by employees.

- (7) Contractor, any subcontractors, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and must comply with ORS 656.017, unless exempt under ORS 656.027.
- (8) Unless otherwise provided by the contract or law, the County has a right to exercise the following remedies for Contractor's failure to perform the scope of work or failure to meet established performance standards:
 - (a) Reduce or withhold payment;
 - (b) 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
 - (c) Declare a default, terminating the public contract and seeking damages and other relief available under the terms of the public contract or other applicable law.
- (9) The contract may be canceled at the election of the County for any substantial breach, willful failure or refusal on the part of Contractor to faithfully perform the contract according to its terms. The 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.
- (10) 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, the County will have no further obligation to Contractor for payment beyond the termination date. This provision does not permit the County to terminate the contract in order to provide similar services or goods from a different contractor.
- (11) Unless otherwise provided by the contract or law, Contractor agrees that the County and its duly authorized representatives may have access to the books, documents, papers, and records of Contractor which are pertinent to this Agreement for the purpose of making audits, examinations, extracts, copies and transcripts. Contractor shall retain and keep accessible such books, documents, papers, and records for a minimum period of (6) six years after the County makes final payment on this Agreement. Copies of applicable records must be made available upon request, and payment of copy costs is reimbursable by the County.
- (12) By execution of this contract, Contractor certifies, under penalty of perjury that:
 - (a) To the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4), and
 - (b) Contractor has not discriminated against minority, women or small business enterprises or one that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.
- (13) Contractor shall 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 Agreement, except if the County has good cause and the contract provides otherwise.
- (14) Contractor shall not assign this contract or any payments due hereunder without the proposed assignee being first approved and accepted in writing by County.
- (15) Contractor shall make all provisions of the contract with the County applicable to any subcontractor performing work under the contract.
- (16) The 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.

- (17) All modifications and amendments to the contract will only be effective only if in writing and executed by both parties.
- (18) 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.
- (19) Unless otherwise provided, data which originates from this contract constitutes "works for hire" as defined by the U.S. Copyright Act of 1976 and is owned by the County. Data includes, but is not limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights. Data which does not originate from this contract, but which is delivered under the contract, is transferred to the County with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided that such license will be limited to the extent which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise the County, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of the contract. Contractor shall give the County prompt written notice of any notice of claim of copyright infringement received by Contractor with respect to any data delivered under this contract. The County will have the right to modify or remove any restrictive markings placed upon the data by Contractor.
- (20) If as a result of this contract, Contractor produces a report, paper, publication, brochure, pamphlet or other document on paper which uses more than a total 500 pages of 8 1/2" by 11" paper, Contractor shall conform to the County Recycled Paper Procurement and Use policy, LM 2.440 through 2.448, by using recycled paper with at least 25% post-consumer content which meets printing specifications and availability requirements.
- (21) The Oregon Standard Specifications for Construction adopted by the State of Oregon, and the Manual on Uniform Traffic Control Devices, each as is currently in effect, are applicable to all road construction projects, except as modified by the bid documents.
- (22) As to contracts for lawn and landscape maintenance, Contractor shall salvage, recycle, compost or mulch yard waste material in an approved site, if feasible and cost-effective.
- (23) When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, Contractor shall 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.