

MARION COUNTY
MARION COUNTY FAIR BOOKING AND PRODUCTION SERVICES
Informal Request for Proposal (IRFP)
C25102-CS-FAIR-BP-16

Date of Issue: September 16, 2016

Closing Date: September 29, 2016

Single Point of Contact (SPC): Sarah Cavazos
Address: 555 Court St NE Suite 3120
City, State, Zip: Salem, OR 97301
Phone (voice): 503-589-3234
Phone (fax): 503-373-4460
E-mail: scavazos@co.marion.or.us

Proposals will be received by the County up until, but no later than 2:00 (pacific time) on September 29, 2016. Deliveries must be made between the County's normal business hours of 8:00 AM and 5:00 PM. Proposals submitted by hand delivery or couriers are to be delivered to:

Marion County Community Services Department
Attn: Sarah Cavazos
555 Court St. NE, Suite 3120
Salem, OR 97301

Or by mail to:

Marion County Community Services Department
Attn: Sarah Cavazos
PO Box 14500
Salem, Oregon 97309

A. INTRODUCTION

The Marion County Fair (MCF) has been a proud tradition since 1860. The mission of the MCF is "to promote the diverse agricultural and cultural heritage of Marion County through active participation of its citizens." The annual MCF is held on the second Thursday of July and is open Thursday through Sunday on the Oregon State Fairgrounds, 2330 17th Street NE, Salem, Oregon 97303. Over the last few years, the fair's attendance has ranged from 22,000 to more than 30,000 people annually for the four-day event. The fair is a showcase for livestock, floriculture, llamas, pygmy goats, hobbies, and crafts ranging from photography to table settings. 4-H youth and Future Farmers of America (FFA) actively participate in competitions. Additionally, the event hosts a carnival, concerts, local entertainment, hands-on activities, and much more.

The Marion County Fair Board (Board) is charged with the responsibility of organizing, promoting, and overseeing the fair. The Board is an advisory body of Marion County existing under the provisions of ORS 565.210-565.330 and 565.610-650 and consists of seven (7) members appointed to three (3) year terms by the Marion County Board of Commissioners. Marion County contracts with a consultant for Event Coordination Services and is seeking proposals to provide Booking and Production Services. The Fair

Board budgeted \$50,000 for big name entertainment for the 2016 MCF; this budget was inclusive of all entertainer fees, associated costs, and Booking Agent fee.

B. SCOPE OF WORK

Working with the Fair Board's Event Coordinator, the Proposer shall perform the anticipated services listed below within the scope of this Agreement. These will include, but are not limited to the following:

1. Work within the entertainment budget established by the MCF Board to secure big name entertainment.
2. Provide consultation, a diverse selection of artist options, and develop an approved talent plan including projections of budget and program considerations with regard to audience appeal, potential and/or appropriateness to the MCF
3. Secure booking for one (1) to two (2) nights of concerts for main stage performance from quality regional and national acts within timelines provided by MCF
4. Review and amend talent contracts as appropriate and present same to the County for execution within timelines provided by the County;
5. Provide MCF with artist's promotional materials within timelines provided by the County;
6. Arrange for production services, including: on-site representation to manage concerts;
7. Consult, coordinate, and conduct meetings with staff as needed and required;
8. Provide booking and production services for two (2) years (2017 and 2018) and coordinate with artists, artists' representatives, sound vendors, production services, and MCF staff before, during, and after performances;
9. Coordinate with artists, artists' representatives, and sound; review and facilitate all backline requirements within a timeline with specific attention to sound needs and staging. as specified in artists' rider per artists' technical advance;
10. Facilitate catering (including clean-up) per artist's rider
11. Facilitate meet and greets and artist signings as needed for sponsor hospitality;
12. Work effectively and professionally with Board, fair staff, other vendors, sponsors, and event volunteers;
13. Effectively work with artists to meet County needs identified in addendums to performer contracts including but not limited to hospitality, lodging, transportation, radius of performance, and merchandise sales;
14. Work to save money and negotiate in the best interests of the fair.

C. METHOD OF AWARD

It is anticipated that the County will select a proposer and award a contract for services. The selection will be made on the proposals submitted and the evaluation criteria listed in Section H. However, the County reserves the right to contact Proposers to obtain information for clarification purposes during the evaluation phase.

D. SPECIAL CONTRACT TERMS AND CONDITIONS

The following Special Terms and Conditions will be included in any Contract awarded as a result of this IRFP.

NONE.

E. INSURANCE REQUIREMENTS

The insurance requirements are set forth in Section 23 of the Contract for Services. Please review these requirements carefully.

F. TERM OF CONTRACT

The Contract is anticipated to start in October 2016. The initial Contract term shall be for one year. The parties may agree to extend the term of the Contract up to a maximum of five years.

G. MINIMUM QUALIFICATION REQUIREMENTS

Booking and Production Services Proposers shall:

1. Demonstrate a minimum of three (3) years of successful provision of complete booking services for similar events and entities (Governmental Agencies included);
2. Demonstrate ability to book national acts with values ranging up to \$80,000 per show;
3. Indicate approach to booking, including any unique or innovative elements that the Consultant plans to bring to the project execution process;
4. Demonstrate knowledge and understanding of matching genre, artist or styles to the targeted audience of the fair. Present a plan to recommend artists that will best contribute to the success of the fair.
5. Demonstrate ability to work in partnership with fair management, media and marketing team, and fair board members.
6. Demonstrate ability to accurately project and budget all costs associated with performer including, backline, hospitality, transport, staging, sound, equipment, and lodging within timelines provided.

H. EVALUATION PROCESS

An evaluation panel will be appointed to evaluate the proposals received. Each of the criteria listed below will be reviewed by the panel for the purpose of ranking proposals, based on how fully each proposal meets the requirements of the IRFP. The evaluation panel has sole judgment during the evaluation process in determining the ranking of proposals.

The County also reserves the right to include additional steps deemed necessary in the evaluation process to select the highest ranked proposer. The County may utilize a two phase evaluation process as described below.

The County will evaluate and score each proposal on the criteria listed above for the purpose of ranking the proposals. After scoring is completed for Phase I, the County may identify a competitive range of up to the three highest ranking proposers to move into the competitive range Phase II. The County may increase the number of proposers in the competitive range if the County’s evaluation of proposals establishes a natural break in the proposal scores indicating that more than three proposers are closely competitive or have a reasonable chance of being determined the most advantageous proposer. The County may decrease the number of proposers in the initial competitive range if the excluded proposers have no reasonable chance of being selected as the most advantageous proposer. The County shall provide written notice to all proposers identifying proposers in the competitive range.

If a competitive range is utilized, the proposers in the competitive range will be invited to participate in the oral presentation and interview process. The final oral presentation, interview agenda, format and selection process will be provided to each proposer selected for the competitive range at the time the interview is scheduled. The scores from Phase I and Phase II will be combined to determine the highest ranking proposer and if deemed to be the most advantageous, will be named as the apparent successful proposer.

I. PROPOSAL QUESTIONS & SCORING

Points possible are as follows:

Evaluation Criteria	Maximum Points
Qualifications of the Firm	15 points
Approach to the IRFP Scope of Work	40 points
Compensation	30 points
References	15 points
Total Points	100

1. Firm History **15 points**

A. Provide a brief description of the firm including history and qualifications of the firm and staff to provide the services proposed.

B. Describe the firm’s experience working in partnership with fair management, media and marketing team, and fair board members. Give examples of similar situations where possible.

2. Scope of Work **40 points**

A. Describe the firm’s experience with complete booking services for similar events and entities, including governmental agencies.

B. Describe the firm’s ability to book national acts with values ranging up to \$80,000 per show; provide specific examples of events and entertainers booked.

C. Describe the firm’s approach to booking, including any unique or innovative elements that the firm plans to bring to the project execution process.

D. Describe the firm’s knowledge and understanding of matching genre, artist or styles to the targeted audience of the fair. Present a plan to recommend artists that will best contribute to the success of the fair.

E. Describe the firm's experience and methods used to accurately project and budget all costs associated with performer including, backline, hospitality, transport, staging, sound, equipment, and lodging within timelines provided.

3. Compensation

30 points

A. Describe the firm's fee and a detailed description of how the fee is calculated. Payment compensation may include one or a combination of the following options:

- Flat fee;
- Commission;
- Other

Please provide an example of how the firm's fees would be calculated, if applicable. Proposers shall identify a minimum contract amount if applicable, and provide a not to exceed maximum based on an entertainment budget of \$50,000 (inclusive of entertainer fees, associated costs, and proposer fee.

4. Reference Checks for the Proposer's Company

15 points

Proposer shall provide a minimum of three (3) references that can rate Proposer's performance, up to 15 points, in these categories:

1. Timeline & budget
2. Experience of firm
3. Communication throughout project
4. Performance

County reserves the right to request references and score in addition to those provided by the Proposer (References), to investigate any references whether or not furnished by the Proposer, and to investigate the past performance of any Proposer. County may investigate the qualifications of Proposer, including but not limited to: successful performance of similar services; compliance with specifications and contractual obligations; its completion or delivery of services on schedule; and its lawful payment of suppliers, subcontractors, and workers. County may postpone the award or execution of the Contract after the announcement of the apparent successful Proposer in order to complete its investigation.

The committee may make up to three attempts to contact each of the reference sources. These attempts shall be made during normal business hours. If the three attempts are unsuccessful, the Proposer shall receive zero points for that Reference source.

Each reference that is contacted and questioned shall be asked questions from the categories above.

J. CHECKLIST

In order to be considered as responsive, each proposal will be reviewed for compliance. Proposer must ensure that all requirements, documentation, signatures, mandatory submission forms, and project references are submitted.

- IRFP Mandatory Submission Forms
- One (1) original signed Proposal in ink
- Five (5) copies of the Proposal

- One (1) digital copy (flash drive or CD)
- Proposal submitted in sealed envelope and deadline met
- Meets minimum qualifications
- Terms and Conditions do not include conditional language
- Minimum three (3) References

K. ATTACHMENTS AND EXHIBITS

1. IRFP Mandatory Submission Forms

Proposer shall complete, sign and return Attachments A-B with the Proposer's submission package. Failure to do so may result in the Proposal being deemed to be non-responsive and not considered for award.

Attachment A – Offeror Representations and Certifications

Attachment B – Trade Secret Form

Attachments A-B are attached hereto and incorporated herein by reference.

2. Exhibits

By submitting a proposal, Proposer shall accept all terms and conditions of the Contract as shown in Exhibit A (Sample Contract for Services). Exhibit A is attached hereto and incorporated herein by reference.

INSTRUCTIONS TO PROPOSERS

- A. COST OF PROPOSAL** Responses to this IRFP do not commit the County to pay any costs incurred by any proposer in the submission of a proposal. The proposer assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.
- B. CLARIFICATION OF SPECIFICATIONS** Any proposer requiring clarification of information must submit specific questions in writing to the contact person named on the cover sheet of this IRFP within 4 days of the date proposals are due.
- C. ADDENDUM** Any change to this IRFP shall be made by written addendum. The County is not responsible for any explanation, clarification or approval made or given orally or in any manner other than by addendum. The Proposer agrees to and shall comply with, all requirements, specifications and terms and conditions contained within the IRFP, including all Addenda, if any;
- D. CANCELLATION** Marion County reserves the right to cancel this IRFP solicitation or award of the contract at any time before execution of the contract by both parties if cancellation is deemed to be in Marion County's best interest. In no event shall Marion County have any liability for the cancellation of award.
- E. REJECTION OF PROPOSAL** Marion County reserves the right to reject any or all responses to this IRFP.
- F. LATE PROPOSAL** Late proposals will not be accepted and will be returned to the proposer unopened.
- G. DISPUTES** In case of any doubt or differences of opinions as to the items or service to be furnished hereunder, or the interpretation of the provisions of the IRFP, the decision of Marion County shall be final and binding upon all parties.
- H. CLARIFICATION OF RESPONSES** Marion County reserves the right to request clarification of any item in a proposal or to request additional information necessary to properly evaluate a particular proposal. Requests for clarification and responses shall be in writing. Requests for clarification and responses shall be provided to each evaluation committee member, except for requests and responses related to a clarification necessary to evaluate whether a proposal has met minimum requirements.
- I. CONFIDENTIALITY** All Proposals are public record and are subject to public inspection after County issues the Notice of the Intent to Award. If a Proposer believes that any portion of its Proposal contains any information that is a trade secret under ORS Chapter 192.501(2) or otherwise is exempt from disclosure under the Oregon Public Records Law ORS Chapter 192, Proposer shall complete and submit the Trade Secret Form (Attachment B) and a fully redacted version of its Proposal.
- Proposer is cautioned that cost information generally is not considered a trade secret under Oregon Public Records Law ORS Chapter 192 and identifying the Proposal, in whole, as exempt from disclosure is not acceptable. County advises each Proposer to consult with its own legal counsel regarding disclosure issues.
- If Proposer fails to identify the portions of the Proposal that Proposer claims are exempt from disclosure, Proposer has waived any future claim of non-disclosure of that information.
- J. PUBLICITY** Any publicity giving reference to this project, whether in the form of press releases, brochures, photographic coverage, or verbal announcement, shall be done only after prior approval of Marion County.

K. CONFLICT OF INTEREST A proposer submitting a proposal thereby certifies that no officer, agent or employee of Marion County who has a pecuniary interest in this IRFP has participated in the contract negotiations on the part of the County, that the proposal is made in good faith without fraud, collusion or connection of any kind with any other proposer of the same call for proposals, and that the proposer is competing solely in its own behalf without connection with or obligation to, any undisclosed person or firm.

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

M. TAXPAYER IDENTIFICATION NUMBER The apparent successful Proposer shall provide its Taxpayer Identification Number (TIN) and backup withholding status on a completed W-9 form if either of the following applies:

- When requested by County (normally in an intent to award notice), or
- When the backup withholding status or any other information of Proposer has changed since the last submitted W-9 form, if any.

County will not make any payment until County has a properly completed W-9.

N. MARION COUNTY RESERVES THE RIGHT TO:

- Waive any irregularities of informalities in any proposals
- Extend the deadline for submission of proposals
- Accept the proposal deemed to be the most beneficial to the public and Marion County
- Negotiate and accept, without advertising the IRFP, the proposal of any other offer in the event that an agreement cannot be successfully negotiated with the selected Proposer.

ATTACHMENT A
OFFEROR REPRESENTATIONS AND CERTIFICATIONS

FAILURE OF THE OFFEROR TO COMPLETE AND SIGN THIS FORM MAY RESULT IN REJECTION OF THE SUBMITTED OFFER

The undersigned, having full knowledge of the specifications for the goods or services specified herein, offers and agrees that this offer shall be irrevocable for at least 30 calendar days after the date offers are due or as stated in the solicitation, and if accepted, to furnish any and/or all goods or services as described herein at the prices offered and within the time specified.

OFFEROR NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____ FAX NUMBER: _____ WEB SITE: _____

TAXPAYER ID NUMBER: _____ DATE/STATE OF INCORPORATION: _____

BUSINESS DESIGNATION: Corporation Sole Proprietor Partnership
 S Corporation Non-Profit Government
 Other _____

OREGON ARCHITECT'S LICENSE NUMBER: _____

ASSURANCES - The Offeror attests that:

1. The person signing this offer has the authority to submit an offer and to represent Offeror in all phases of this procurement process;
2. The information provided herein is true and accurate;
3. The Proposer certifies that it does not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, financial ability, age or other non-job-related factors as per ORS 659 and USC 42 2000e.
"Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder". ORS 279A.120 (1) (j)(b);
4. Any false statement may disqualify this offer from further consideration or because of contract termination; and
5. The Offeror will notify the department Contract Specialist within 30 days of any change in the information provided on this form.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - The Offeror certifies to the best of its knowledge and belief that neither it nor any of its principals:

1. Are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from submitting bids or proposals by any federal, state or local entity, department or agency;
2. Have within a five-year period preceding the date of this certification been convicted of fraud or any other criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally charged with commission of any of the offenses enumerated in paragraph 2. of this certification;
4. Have, within a five-year period preceding the date of this certification had a judgment entered against contractor or its principals arising out of the performance of a public or private contract;
5. Have pending in any state or federal court any litigation in which there is a claim against contractor or any of its principals arising out of the performance of a public or private contract; and
6. Have within a five-year period preceding the date of this certification had one or more public contracts (federal, state, or local) terminated for any reason related to contract performance.

Where Offeror is unable to certify to any of the statements in this certification, Offeror shall attach an explanation to their offer. The inability to certify to all of the statements may not necessarily preclude Offeror from award of a contract under this procurement.

SIGNATURE OF AUTHORIZED PERSON

Signature _____ Date _____

Print Name & Title _____

Contact Person for this procurement: _____

Phone _____ Email _____

**ATTACHMENT B
TRADE SECRET FORM
IRFP: MCF BOOKING AND PRODUCTION SERVICES**

Due Date: 2:00 PM (PST) On September 29, 2016

- 1.** I am an employee of the Proposer, I have knowledge of the Informal Request for Proposals referenced herein, and I have full authority from the Proposer to submit this Trade Secret Form and accept the responsibilities stated herein.
- 2.** I am aware that the Proposer has submitted a Proposal, dated on or about September 15, 2015 (the "Proposal"), to Marion County in response to Request for Proposals C25102-PW ASH-15, for Beneficial Use of Municipal Solid Waste Incinerator Ash Residue and I am familiar with the contents of the IRFP and Proposal.
- 3.** I have read and am familiar with the provisions of Oregon's Public Records Law, Oregon Revised Statutes ("ORS") 192.410 through 192.505, and the Uniform Trade Secrets Act as adopted by the State of Oregon, which is set forth in ORS 646.461 through ORS 646.475. I understand that the Proposal is a public record held by a public body and is subject to disclosure under the Oregon Public Records Law unless specifically exempt from disclosure under that law.
- 4.** I have reviewed the information contained in the Proposal. The Proposer believes the information listed in Exhibit A is exempt from public disclosure (collectively, the "Exempt Information"), which is incorporated herein by this reference. It is my opinion that the Exempt Information constitutes "Trade Secrets" under either the Oregon Public Records Law or the Uniform Trade Secrets Act as adopted in Oregon because that information is either:
 - A.** A formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that:
 - i.** is not patented,
 - ii.** is known only to certain individuals within the Proposer's organization and that is used in a business the Proposer conducts,
 - iii.** has actual or potential commercial value, and
 - iv.** gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.or
 - B.** Information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:
 - i.** Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
 - ii.** Is the subject of efforts by the Proposer that are reasonable under the circumstances to maintain its secrecy.
- 5.** I understand that disclosure of the information referenced in Exhibit A may depend on official or judicial determinations made in accordance with the Public Records Law.

Proposer Signature

ATTACHMENT B – TRADE SECRET FORM

Proposer identifies the following information as exempt from public disclosure:

EXHIBIT A – SAMPLE CONTRACT

This contract is between Marion County (a political subdivision of the State of Oregon) hereinafter called County, and [Insert Name], [a/an Corporation, non-profit, etc.] hereinafter called Contractor.

Contractor agrees to perform, and County agrees to pay for, the services and deliverables described in Exhibit A (the “Work”).

1. TERM. This Contract is effective on the date it has been signed by all parties and all required County approvals have been obtained. This Contract expires on [insert date]. The parties may extend the term of this Contract provided that the total Contract term does not extend beyond [insert date or event],

2. CONSIDERATION.

A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$[Insert amount]. County will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

B. Interim payments to Contractor shall be made in accordance with the payment schedule and requirements in Exhibit A.

3. COMPLIANCE WITH STATUTES AND RULES.

A. County and the Contractor agree to comply with the provisions of this contract and all applicable federal, state, and local statutes and rules.

Unless otherwise specified, responsibility for all taxes, assessment, and any other charges imposed by law upon employers shall be the sole responsibility of the Contractor. Failure of the Contractor or the County to comply with the provisions of this contract and all applicable federal, state, and local statutes and rules shall be cause for termination of this contract as specified in sections concerning recovery of funds and termination.

County’s performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein.

B. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, “tax laws” includes all the provisions described in subsection 27. C. (i) through (iv) of this Contract.

i. Any violation of subsection B of this section shall constitute a material breach of this Contract. Further, any violation of Contractor’s warranty, in subsection 27.3 of this Contract, that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle the County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to

pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- a. Termination of this Contract, in whole or in part;
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing [replacement Services/replacement Goods/ a replacement contractor].

C. These remedies are cumulative to the extent the remedies are not inconsistent, and the County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

4. CIVIL RIGHTS, REHABILITATION ACT, AMERICANS WITH DISABILITIES ACT and TITLE VI OF THE CIVIL RIGHTS ACT. Contractor agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, No qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

5. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance of this Contract.

6. FORCE MAJEURE. Neither County nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. County may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

7. FUNDING MODIFICATION.

A. County may reduce or terminate this contract when state or federal funds are reduced or eliminated by providing written notice to the respective parties.

B. In the event the Board of Commissioners of the County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, the Contractor agrees to abide by any such decision including termination of service.

8. RECOVERY OF FUNDS. Expenditures of the Contractor may be charged to this contract only if they (1) are in payment of services performed under this contract, (2) conform to applicable state and federal regulations and statutes, and (3) are in payment of an obligation incurred during the contract period.

Any County funds spent for purposes not authorized by this contract and payments by the County in excess of authorized expenditures shall be deducted from future payments or refunded to the

County no later than thirty (30) days after notice of unauthorized expenditure or notice of excess payment.

Contractor shall be responsible to repay for prior contract period excess payments and un-recovered advanced payments provided by the County. Repayment of prior period obligations shall be made to the County in a manner agreed on.

9. ACCESS TO RECORDS.

A. Contractor shall permit authorized representatives of the County, State of Oregon, or the applicable audit agencies of the U.S. Government to review the records of the Contractor as they relate to the contract services in order to satisfy audit or program evaluation purposes deemed necessary by the County and permitted by law.

B. Contractor agrees to establish and maintain financial records, which indicate the number of hours of work provided, and other appropriate records pertinent to this contract shall be retained for a minimum of three (3) years after the end of the contract period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved.

10. REPORTING REQUIREMENTS. Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Contract. Such assurances provided by the Contractor shall be supported by documentation in Contractor's possession from third parties.

11. CONFIDENTIALITY OF RECORDS.

A. Contractor shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Contractor's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.

B. Contractor shall ensure that its agents, employees, officers and subcontractors with access to County and Contractor records understand and comply with this confidential provision.

C. If Contractor receives or transmits protected health information, Contractor shall enter into a Business Associate Agreement with County, which shall become part of this Contract, if attached hereto.

D. Client records shall be kept confidential in accordance with ORS 179.505, OAR 309-11-020, 45 CFR 205.50 and 42 CFR Part 2 as applicable.

12. INDEMNIFICATION AND INSURANCE.

A. Contractor shall defend, save, indemnify, and hold harmless the County, its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. Contractor shall have control of the defense and settlement of any claim that is subject to this section. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of either County or any department of County, nor purport to act as legal representative of either County or any of its departments, without first receiving from County Legal Counsel authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of

County without the approval of County Legal Counsel. County may, at its election and expense, assume its own defense and settlement.

B. Contractor shall obtain the insurance required under section 23 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

C. County, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains a self-insurance program that provides property damage and personal injury coverage.

13. EARLY TERMINATION. This Contract may be terminated as follows:

A. County and Contractor, by mutual written agreement, may terminate this Contract at any time.

B. County in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.

C. Either County or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

D. Notwithstanding section 13C, County may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.

14. PAYMENT ON EARLY TERMINATION. Upon termination pursuant to section 13, payment shall be made as follows:

A. If terminated under 13A or 13B for the convenience of the County, the County shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract. County shall not be liable for direct, indirect or consequential damages. Termination shall not result in a waiver of any other claim County may have against Contractor.

B. If terminated under 13C by the Contractor due to a breach by the County, then the County shall pay the Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.

C. If terminated under 13C or 13D by the County due to a breach by the Contractor, then the County shall pay the Contractor for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff to which the County is entitled.

15. INDEPENDENT CONTRACTOR.

A. The Contractor is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out the Contractor's activities and responsibilities for the purpose of implementing the provisions of this contract, and maintains the appropriate license/certifications, if required under Oregon Law. This contract shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between

the parties other than that of independent parties. The Contractor is acting as an “independent contractor” and is not an employee of County, and accepts full responsibility for taxes or other obligations associated with payment for services under this contract. As an “independent contractor”, Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties for the duration of the contract.

B. **SUBCONTRACTING/NONASSIGNMENT.** No portion of the Contract may be contracted or assigned to any other individual, firm or entity without the express and prior approval of the County.

16. GOVERNING LAW AND VENUE. This Contract shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Contract shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County according to law.

17. OWNERSHIP AND USE OF DOCUMENTS. All documents, or other material submitted to the County by Contractor shall become the sole and exclusive property of the County. All material prepared by Contractor under this Contract may be subject to Oregon’s Public Records Laws.

18. NO THIRD PARTY BENEFICIARIES.

A. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.

B. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

19. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns.

20. MERGER CLAUSE. This Contract and the attached exhibits constitute the entire agreement between the parties.

A. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.

B. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.

C. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

21. WAIVER. The failure of any Party to enforce any provision of this Contract shall not constitute a waiver by that Party or any other provision. Waiver of any default under this Contract by any Party shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

22. REMEDIES. In the event of breach of this Contract, the Parties shall have the following remedies:

A. If terminated under 13C by County due to a breach by the Contractor, the County may complete the Work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of

completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the County the amount of the reasonable excess.

B. In addition to the remedies in sections 13 and 14 for a breach by the Contractor, County also shall be entitled to any other equitable and legal remedies that are available.

C. If County breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

23. INSURANCE.

A. REQUIRED INSURANCE. Contractor shall obtain at Contractor's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to County:

i. WORKERS COMPENSATION. All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. PROFESSIONAL LIABILITY. Covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County Not required by County.

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

iii. COMMERCIAL GENERAL LIABILITY. Covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the County. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County Not required by County.

Bodily Injury/Death:

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager
- \$500,000 Per occurrence limit for any single claimant
- \$1,000,000 Per occurrence limit for multiple claimant

iv. AUTOMOBILE LIABILITY INSURANCE. Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability").

Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County **Not required by County.**

Bodily Injury/Death:

- Oregon Financial Responsibility Law, ORS 806.060 (*\$25,000 property damage/\$50,000 bodily injury \$5,000 personal injury*).
- \$500,000 Per occurrence limit for any single claimant; and
- \$1,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

B. ADDITIONAL INSURED. The Commercial General Liability insurance required under this Contract shall include Marion County, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Contractor or its insurer(s) to County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by County.

D. CERTIFICATE(S) OF INSURANCE. Contractor shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

24. NOTICE. Except as otherwise expressly provided in this contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, or mailing the same, postage prepaid.

A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.

B. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage delivered to:

To Contractor:
**
Manager

To County:
Procurement & Contracts

555 Court Street NE, Suite 5232
P.O. Box 14500
Salem, Oregon 97309
Fax No. 503-588-5237

25. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in sections 2, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25 and 26.

26. SEVERABILITY. If any term or provision of this Contract is declared illegal or in conflict with any law by a court of competent jurisdiction, the validity of the remaining terms and provisions that shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

27. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to the County that:

- A. Contractor has the power and authority to enter into and perform this Contract.
- B. This Contract, when executed and delivered, is a valid and binding obligation of Contractor, enforceable in accordance with its terms.
- C. Contractor (to the best of Contractor’s knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the effective date of this Contract, faithfully has complied with:
 - i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
 - ii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor;
 - iii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
 - iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- D. Any Services provided to the County under this Contract, and Contractor’s Services rendered in the performance of Contractor’s obligations under this Contract, shall be provided to the 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.

28. CERTIFICATIONS AND SIGNATURE. THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF Contractor. The undersigned certifies under penalty of perjury both individually and on behalf of Contractor is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor.

**MARION COUNTY SIGNATURE
BOARD OF COMMISSIONERS:**

Chair

Date

Commissioner

Date

Commissioner

Date

Authorized Signature:

Department Director or designee

Date

Authorized Signature:

Chief Administrative Officer

Date

Reviewed by Signature:

Marion County Legal Counsel

Date

Reviewed by Signature:

Marion County Contracts & Procurement

Date

[CONTRACTOR] SIGNATURE

Authorized Signature:

Date

Title: _____

**SAMPLE CONTRACT
EXHIBIT A
STATEMENT OF WORK**

1. STATEMENT OF SERVICES. Contractor shall perform Services as described below.

A. GENERAL INFORMATION. *(Insert project background information, County objectives and any other general information that may be helpful to describe the context of this contractual relationship. This information may come from your solicitation document.)*

B. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE. *(Describe specific services to be performed, deliverables to be provided, Goods to be delivered, the delivery schedule for the services, deliverables and Goods, including documents and reports, if any, to be created and delivered as part of the services. An individual reading the Contract must be able to easily answer the following questions: a. Who is purchasing? b. Who is selling? c. What is being purchased? d. How much is being purchased? e. When will it be delivered? f. How much will be paid and what is the payment method? g. When will payment be made? Be specific, clear, concise and complete when describing the intended performance obligations of the parties).*

C. SPECIAL REQUIREMENTS.

Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.

Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession.

OPTION FOR REQUIREMENT THAT CONTRACTOR PROVIDE KEY PERSONS:

i. KEY PERSONS. Contractor and County agree that each individual specified below is an individual whose special qualifications and involvement in Contractor's performance of Services form part of the basis of agreement between the parties for this Contract and is an individual through whom Contractor shall provide to County the expertise, experience, judgment, and personal attention required to perform Services ("Key Person"). Each of the following is a Key Person under this Contract:

[List name, title, identify the specific services each Key Person is required to perform under this Contract.]

Neither Contractor nor any Key Person of Contractor shall delegate performance of Services that any Key Person is required to perform under this Contract to others without first obtaining County's written consent. Further, Contractor shall not, without first obtaining County's prior written consent, re-assign or transfer any Key Person to other duties or positions so that the Key Person is no longer available to provide County with that Key Person's expertise, experience, judgment, and personal attention. If Contractor requests County to approve a re-assignment or transfer of a Key Person, County shall have the right to interview, review the qualifications of,

and approve or disapprove the proposed replacement(s) for the Key Person. Any individual County approves as a replacement for a Key Person is deemed a Key Person under this Contract.

2. COMPENSATION. The total amount available for payment to Contractor under Exhibit A, section 2.A and for authorized reimbursement to Contractor under Exhibit A, section 2.C is \$ _____. **[NOTE: THIS AMOUNT SHOULD EQUAL THE TOTAL AMOUNT PAYABLE UNDER EX. A, SECTION 2.A PLUS THE TOTAL AMOUNT AUTHORIZED FOR REIMBURSEMENT UNDER EX. A, SECTION 2.C AND THE AMOUNT IDENTIFIED UNDER 2. COMPENSATION.]**

A. METHOD OF PAYMENT FOR SERVICES. **[OPTION 1 – FIXED PRICE FOR EVERYTHING:** County shall pay Contractor \$ _____ for completing all Services and delivering all Goods required under this Contract.]

[OPTION 2 – FIXED PRICE PER DELIVERABLE AND GOODS: County shall pay Contractor the amounts specified for each of the following deliverables and Goods that County has accepted: **(CLEARLY SPECIFY DELIVERABLE AND FIXED AMOUNT FOR THAT DELIVERABLE)]**

[OPTION 3 – HOURLY RATE UP TO MAXIMUM AMOUNT: County shall pay Contractor \$ _____ per hour up to but not in excess of \$ _____ for completing all Services required under this Contract.]

[OPTION 4 – COMBINATION FIXED PRICE AND HOURLY RATE: County shall pay Contractor \$ _____ for _____. County shall pay Contractor \$ _____ per hour up to but not in excess of \$ _____ for _____.]

B. BASIS OF PAYMENT FOR SERVICES. **OPTION 1 – Full completion.** County shall pay Contractor all amounts due under this Contract in one payment upon County's approval of Contractor's invoice to County but only after County has determined that Contractor has completed, and County has accepted, all Services; and Contractor has delivered and County has accepted all Goods required under this Contract.

OPTION 2 - Milestone progress payments for completed Services. County shall pay Contractor all amounts due for Services completed and accepted by County and for Goods delivered and accepted by County at the following milestones after County's approval of Contractor's invoice to County for those Services and Goods: **(list payment milestones)**

OPTION 3 - Monthly progress payments for completed Services. County shall pay Contractor monthly progress payments upon County's approval of Contractor's invoice submitted to County for completed Services and delivered Goods, but only after County has determined that Contractor has completed, and County has accepted the completed Services and County has accepted the delivered goods.

C. EXPENSE REIMBURSEMENT. **OPTION 1: No Expense Reimbursement -** County will not reimburse Contractor for any expenses under this Contract.

OPTION 2: County will reimburse Contractor for the following expenses incurred only when the expenses are essential to the discharge of, and within the course and scope of, Contractor's obligations under this Contract.

Total for Reimbursable Expenses. The total amount available to reimburse Contractor for expenses authorized for reimbursement under this Exhibit A, section 2.C is

\$ _____.

D. GENERAL PAYMENT PROVISIONS.

Notwithstanding any other payment provision of this contract, failure of the Contractor to submit required reports when due, or failure to perform or document the performance of contracted services, may result in withholding of payments under this contract. Such withholding of payment for cause shall begin thirty (30) days after written notice is given by the County to the Contractor, and shall continue until the Contractor submits required reports, performs required services or establishes, to the County's satisfaction, that such failure arose out of causes beyond the control, and without the fault or negligence of the Contractor.

E. INVOICES. Contractor shall send all invoices to County's Contract Administrator at the address specified below or to any other address as County may indicate in writing to Contractor.

**Marion County
Attn: Community Services Department, Sarah Cavazos
555 Court St. NE, Suite 3120
Salem, OR 97309**