

# **REQUEST FOR PROPOSALS**

## **ENGINEERING CONSULTANT SERVICES**

### **HUNNELL RD: LOCO RD TO TUMALO RD IMPROVEMENT**

**PROPOSALS DUE: SEPTEMBER 27, 2019, 2:00 PM PST**



**ROAD  
DEPARTMENT**

**61150 SE 27<sup>TH</sup> STREET  
BEND, OREGON 97702  
PHONE: (541) 388-6581  
FAX: (541) 388-2719  
WEB: [www.deschutes.org/road](http://www.deschutes.org/road)**

**DESCHUTES COUNTY, OREGON  
ROAD DEPARTMENT**

**REQUEST FOR PROPOSALS**

**ENGINEERING CONSULTANT SERVICES**

**HUNNELL RD: LOCO RD TO TUMALO RD IMPROVEMENT**

Deschutes County Road Department is requesting proposals for services from a qualified team of engineering professionals to provide engineering design and construction management and inspection services for the Hunnell Rd: Loco Rd to Tumalo Rd Improvement project. The total Project cost, including engineering and construction, is estimated to be \$3,450,000.00.

RFP packets are available on the Deschutes County website at: <https://www.deschutes.org/rfps>. Consultants intending to submit proposals must register on-line when retrieving the RFP packet.

The consultant selection process will be carried out according to ORS 279C.110 and Deschutes County Code. **Submittals are due by 2:00 PM on September 27, 2019.**

Inquiries pertaining to the RFP shall be directed to Cody Smith, County Engineer, in writing at [Cody.Smith@deschutes.org](mailto:Cody.Smith@deschutes.org).

PUBLISHED:  
DAILY JOURNAL OF COMMERCE: August 28, 2019  
BEND BULLETIN: August 28, 2019

## SECTION 1: STATEMENT OF PROJECT

### Introduction

Hunnell Road between Loco Rd at the northerly Bend city limit and Tumalo Rd is a north-south rural collector road as identified in the Deschutes County Transportation System Plan (TSP). The road currently has the following deficiencies:

- Between Loco Rd and Rogers Rd, Hunnell Road is an unimproved dirt road that is only passable by high-clearance vehicles.
- North of Rogers Rd, Hunnell Rd is a combination of gravel and paved road of variable width.
- A few short segments of the road are located outside of the established public right of way.
- The intersection with Pohaku Rd is poorly aligned. From this intersection, Hunnell Road is aligned east-west for a short segment, then makes a sharp 90 degree curve proceeding north.

In partnership with ODOT and the City of Bend, Deschutes County committed to improving Hunnell Road between Loco Rd and Tumalo Rd as part of the local match for ODOT's INFRA grant proposal for the US 97: Bend North Corridor project. FHWA has recently announced that the US 97: Bend North Corridor project will receive \$60.4 million in INFRA funding. Deschutes County has obligated \$3,450,000 in County funds for the Hunnell Road project in the Road Department's 2020-2024 Capital Improvement Plan with the goal of completing construction of the project by December 31, 2022.

The scope of the project will include:

- Constructing/widening the roadway to 34 ft.-wide pavement with 2 ft-wide aggregate shoulders.
- Realigning Hunnell Rd at the intersection with Pohaku Rd.
- Legalizing the right of way where necessary.
- Removal of roadside hazards.
- Improving the approach to Tumalo Rd.
- Constructing a left turn lane for westbound Tumalo Rd at Hunnell Rd.

The existing roadway alignment and approximate right of way boundaries can be viewed on the Deschutes County Dial website at <https://dial.deschutes.org/Real/InteractiveMap>.

Deschutes County Road Department seeks the services of a qualified team of engineering professionals to provide the following:

1. Preliminary engineering services, including design and surveying.
2. Right of way acquisition services.
3. Construction management and inspection services.

Specifically, design and prepare construction plans and specifications for the project and supply listed services:

- A. Provide labor, equipment and materials to complete the surveying needed to prepare mapping and complete the design of all elements of the project. Consultant shall:
  - a. Perform research of existing records
  - b. Establish a horizontal control network
  - c. Establish a vertical control network
  - d. Conduct a topographic survey
  - e. Work with the County Surveyor to:
    - i. Recover and tie monuments of record
    - ii. Resolve road centerline alignments
    - iii. Prepare a Recovery and Retracement Survey Filing Map
    - iv. Prepare the right-of-way base map
  - f. Prepare legal descriptions and maps for right of way acquisitions and legalizations required for the project.
  - g. Monument the new project right of way and file a survey of record for the project upon construction completion.

- B. Development of engineered Public Improvement Plans. Consultant shall:
  - a. Utilizing AASHTO, ODOT, MUTCD, and other industry standards and best practices, produce road improvement plans for the selected improvements.
    - i. Produce 30%, 90% and 100% plan sets, including refined construction cost estimates with each submittal.
  - b. Design storm water runoff control and treatment per the Central Oregon Storm Water Manual
  - c. Develop traffic control plans for the construction phase of the project.
  - d. Prepare Project special provisions in reference to the latest edition of the Oregon Standard Specifications for Construction. The County shall provide template documents in MS Word format to assist the preparation of the Special Provisions.
  - e. Provide an engineer's construction cost estimate and complete bid schedule for the project.
  - f. Provide appropriate construction period services necessary to answer all project related questions as well as review the contractor's product submittals.
  - g. Work with the Deschutes County Surveyor to field verify and document the existing right-of-way adjacent to the Project.
  - h. Determine if there will be any utility design and relocation required as part of the project, including, but not limited to, power line relocation, canal piping, and any other utilities that fall within the project limits. Coordinate relocated and new utility alignments within the Special Provisions as necessary.
  - i. Note:
    - i. Road and other project components shall be designed to current AASHTO and Deschutes County standards and specifications.
    - ii. Contract Documents shall incorporate the current Oregon Standard Specifications for Construction and applicable Deschutes County and ODOT standards.
    - iii. Any affected irrigation crossings and structures will require review by the affected irrigation district.
- C. Provide right of way acquisition services. Consultant shall
  - a. Prepare and distribute general information notices to impacted property owners
  - b. Provide appraisal reports for identified right of way acquisitions.
  - c. Prepare and distribute offer packages to impacted property owners.
  - d. Conduct negotiations for right of way acquisitions.
- D. Provide Construction Management and Inspection Services: County anticipates negotiating consultant contract amendment for these services after 90% design review and prior to construction start.

#### 4. Specifications and Expectations

- A. Pre-Design: Attend pre-design meeting with the County to finalize a specific scope of work for the project to finalize contract with the County for design services.
- B. Construction Plans: Prepare construction drawings for the above defined scope of work. Drawings shall be complete and correct working drawings and shall be in conformance with current Deschutes County Standards and Specifications and other industry standards.
  - i. The Consultant shall perform or facilitate design of other utilities such as irrigation, power, natural gas, phone and cable by coordinating with each respective utility company as required.
  - ii. The drawings will be prepared by obtaining existing system information from the County and by field surveying to show existing features. Horizontal and vertical control will be based on the Deschutes County Coordinate System. Drawings will show physical features, and will include legal boundaries, tax lots, and tax lot identification.

- iii. The intent of the drawings is to provide detailed information for construction by a contractor selected through the competitive bidding process by Deschutes County.
- C. Special Provisions: Prepare technical specifications.
- i. The County will provide the Consultant with specifications (in Microsoft Word format) from a typical project for use in this Project.
  - ii. Technical specifications will include, but are not limited to, general and special requirements, material and testing requirements, special construction instructions, project closeout and cleanup, surveying (construction staking), construction and other specifications as necessary.
- D. Plan Review: Submit draft and final drawings with specifications to the Deschutes County Road Department and other impacted utilities, if necessary for review. County will pay for any applicable design review fees.
- i. Consultant will contact and coordinate with each agency to expedite the review process.
- E. Final Plans: Prepare final drawings and specifications by revising draft versions as necessary from review comments. It is expected that the selected Consultant would meet with County staff and other agencies on a regular basis to review progress and refine draft design concepts. Provide an illustrative single page (11 x 17) exhibit drawing of the final layout for use in public meetings and presentations.
- F. Contract Documents: Provide Contract\Bid Documents (drawings and specifications) to the Deschutes County Road Department for use during bidding. The final documents will include bid quantities in the proposal based on take-offs from the design drawings. Provide an electronic printer-ready (pdf) set of final plans in 11 x 17 sheet size and 11x17 sheet size .
- G. Control: Provide survey control data consisting of traverse control points with known X,Y, and Z coordinates. The points shall be 5/8-inch rebar with horizontal and vertical information and shown on the construction drawings. This information is to be used for construction and shall be located sufficiently out of the proposed construction zone, yet readily available to the Contractor and the Surveyor providing construction staking.
- H. 3D Elevation Model: Provide digital 3-dimensional elevation models of existing ground and proposed improvements in LandXML or similar format.
- I. Project Budget: The project currently has a budget of \$3,450,000.00 for preliminary engineering, right of way, and construction.
- J. Design Timeline: Road Department will require 15 business days to review draft design submittals. It is anticipated that the consultant will meet with the County to provide progress reports and address design issues on a periodic basis (monthly) throughout the design process. The consultant should plan for a meeting with County representatives up to eight times during the development and approval process of the plans, including but not limited to:
- 1. Initial project meeting with appropriate attendees;
  - 2. 30% completion review meeting;
  - 3. 90% review meeting, prior to final submittal;
  - 4. Pre-bid for construction meeting; and
  - 5. Pre-construction meeting

## SECTION 2: PROPOSAL PREPARATION, SCHEDULE, CRITERIA AND REVIEW

There will be no mandatory pre-proposal meeting. All questions shall be made in writing via email to Cody Smith, County Engineer ([cody.smith@deschutes.org](mailto:cody.smith@deschutes.org)) by **2:00 p.m. (PST) September 13, 2019**. Faxed requests for information will not be accepted. Responses to questions will be made in writing as soon as practical and no later than **September 20, 2019**.

Consultants intending to submit a proposal **must register on-line** when retrieving the RFP packet for this project at: <https://www.deschutes.org/rfps>.

Proposals must be received by the Deschutes County Road Department office no later than **2:00 pm (PST), September 27, 2019**. **Proposals received after the deadline will not be considered.**

The County anticipates the following schedule for the project:

RFP Advertisement:	August 28, 2019
Proposal Due Date:	September 27, 2019
RFP Review completed:	October 9, 2019
County Commission approval of contract:	November 13, 2019
Notice to proceed:	November 15, 2019

The Proposal will be judged on the completeness and quality of content. Only those consultants who supply complete information as required in the Evaluation Criteria below will be considered for evaluation. Deschutes County reserves the right to reject any or all proposals. It is understood that all statements will become part of the public file on this matter, without obligation to Deschutes County. The County is not liable for any cost incurred by the consultant in the preparation or presentation of their proposal.

### Evaluation Criteria:

The Proposal submitted shall respond to the following criteria in the order as listed below:

	ITEM	MAXIMUM PAGE ALLOWANCE	SCORE
A	Introductory Letter	1	0
B	Project Team	3	25
C	Firm's Capabilities	1	15
D	Project Understanding and Approach (Scope)	4	50
E	Communication and Availability	1	5
F	Supportive information (references, resumes, licenses, etc.)	6	5

### Criteria Explanation:

A. Introductory Letter: A statement in the introductory letter shall specifically stipulate that all terms and conditions contained in the RFP are accepted by the consultant. The letter shall also name the person(s) authorized to represent the consultant in any negotiations and sign any contract which may result.

B. Project Team: This criterion relates to the project principal, the project manager, key staff and sub consultants. The basic issue is how well the team's qualifications and experience relate to this specific project. Elements to be considered:

- Extent of principal's involvement
- Key member experience on similar projects
- Team experience on similar projects
- Unique qualifications of key members
- Qualifications and relevant individual experience
- Qualifications and relevant sub-consultant experience
- Comprehensive team expertise to cover all phases of the project
- Project manager's expertise with similar projects and with interdisciplinary teams
- Approximate number of people to be assigned to the project
- Organizational Chart (Project Team) may be included under supportive information
- Familiarity with appropriate state, federal, and local laws and regulations
- Project Manager or Principal must be a licensed Professional Engineer in Oregon.

C. Firm Capabilities: This criterion relates to the firm's capabilities and resources in relation to the project. Elements to be considered:

- Resources available to perform the work for the duration of the project (Include Capacity Chart, i.e., Can the firm accommodate the work?)
- Other on-going projects
- Similar projects (by type and location) performed within the last five years that best characterize work quality and cost control
- Similar projects completed for other government agencies (references will be contacted by Deschutes County)
- The firm's experience with Deschutes County
- Internal procedures and/or policies associated or related to work quality and cost control
- Management and organization capabilities

D. Project Understanding and Approach: This criterion relates to the basic or preliminary understanding of the project, and the methodology and course of action used to meet the goals and objectives of the project. The basic issue is whether the firm has a clear and concise understanding of the project (based on existing information) and the major issues to address and whether a project approach has been formulated. Elements to be considered:

- The firm's basic understanding of the project as demonstrated within their proposal.
- Provision of a clear and concise explanation of work required.
- A typical project schedule that shows major tasks and approvals required to complete the job on schedule.
- **A draft, line item scope of work for consultant services (not including hourly or cost estimates within the body of the proposal) should be included.**

E. Communication and Availability: This criterion relates to the consultant's accessibility, availability, and interaction with the Deschutes County staff. Elements to be considered:

- Ability to establish and maintain functional and productive working relationships.
- Accessibility for interaction with Deschutes County staff.
- Effectiveness of presentation skills.

F. Supportive Information: Supportive material may include graphs, charts, photographs, resumes, references, etc., and is totally discretionary, but, as outlined in the Evaluation Criteria, it will be scored. Elements to be considered:

- Quality and relevancy of material provided

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

### **SECTION 3: EVALUATION**

A RFP evaluation committee will be appointed to evaluate the submitted proposals. Consultants will be evaluated on their response to the evaluation criteria.

### **SECTION 4: SELECTION**

The proposals will require approximately 14 calendar days for evaluation. The top ranked firms may, at the County's discretion, be required to make a presentation in support of their proposal to the evaluation committee. The interview will serve to assist the County in selecting the successful firm and will serve as a tool to refine scoring of the RFP to produce a final ranking. Contract negotiations will follow the selection of the top firm. An initial scope and fee proposal will be required to be submitted within 14 calendar days of notification. The consultant selection process will be carried out under Oregon Revised Statutes, Chapter 279C.110.

### **SECTION 5: CONTRACT REQUIREMENTS AND ADMINISTRATION**

The successful consultant will be required to enter into a County Services Contract (see attached) with Deschutes County. The successful consultant must also submit documents addressing tax law, professional liability insurance, workers compensation, and overhead expense as part of the contract, as well as an Oregon tax account number.

If the County and the top ranked consultant are not able to negotiate a contract, the County will initiate negotiation with the second place consultant, and so on.

Any reference or general condition of employment of consultant that seeks to have State of Oregon indemnify and hold harmless the consultant, its sub-consultants, agents and employees from and against all claims, damages, losses and expenses, direct and indirect, or consequential damages arising out of, or resulting from the performance of work by consultant, or the work of others, is limited to the extent permitted by Oregon Constitution, Article XI, Section 7, and the Oregon Tort Claims Act ORS 30.300 inclusive.

### **SECTION 6: SUBMISSION**

Submit the Proposal in pdf format (10 MB maximum file size) as an email attachment to [cody.smith@deschutes.org](mailto:cody.smith@deschutes.org) no later than **2:00 pm, September 27, 2019**. Enter "**RFP: Hunnell Rd Improvement**" as the email subject line.

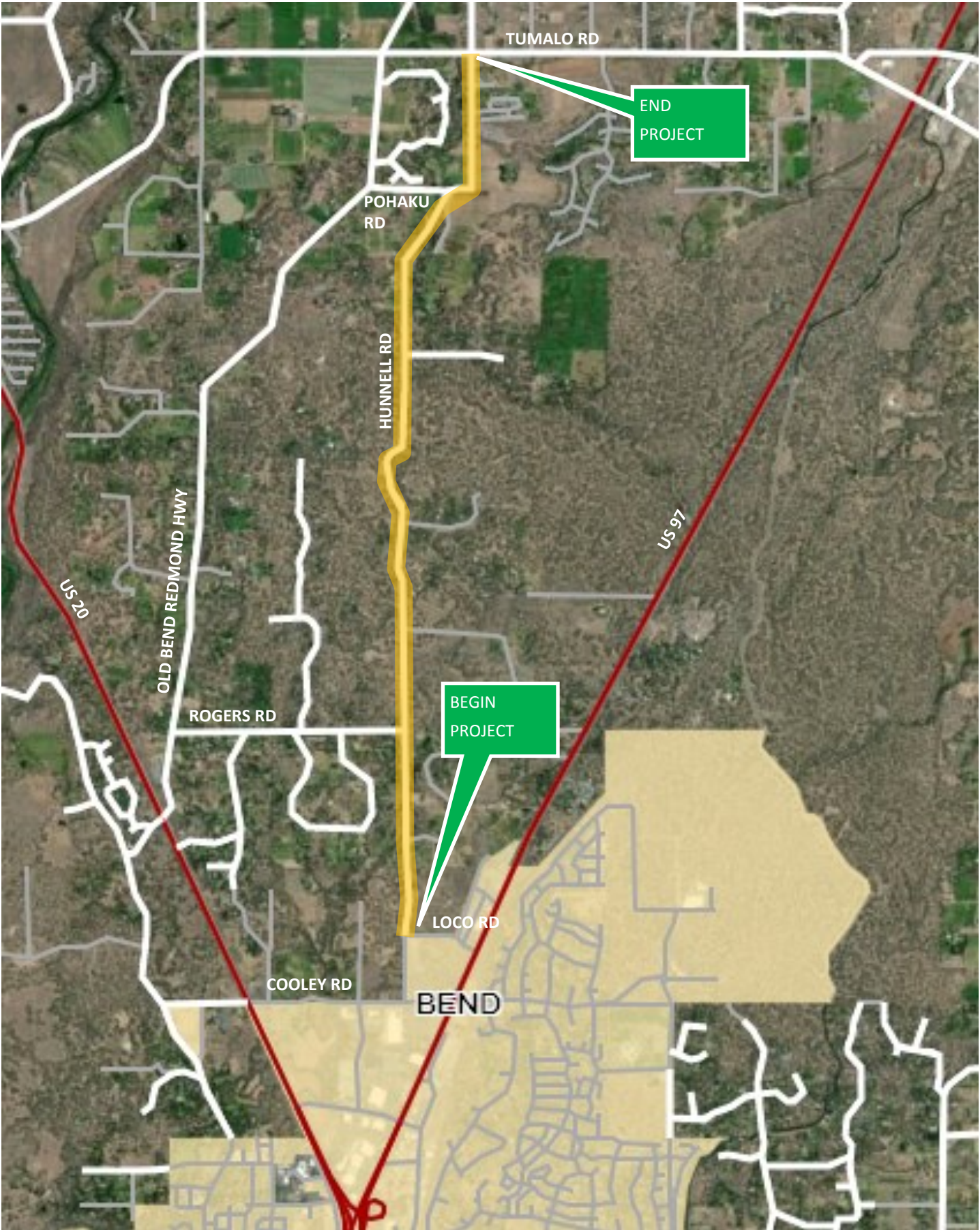
Direct all other questions or inquiries to:



Cody Smith, County Engineer  
Deschutes County Road Department  
61150 SE 27<sup>th</sup> St.  
Bend, OR 97702  
Email: [cody.smith@deschutes.org](mailto:cody.smith@deschutes.org)

Attachments:

Project Location Map  
Deschutes County Consultant Contract Template



ROAD  
DEPARTMENT

**HUNNELL RD: LOCO RD TO TUMALO RD IMPROVEMENT PROJECT**

For Recording Stamp Only

**DESCHUTES COUNTY SERVICES CONTRACT  
CONTRACT NO. 20\_\_-**

This Contract is between DESCHUTES COUNTY, a political subdivision of the State of Oregon, acting by and through the \_\_\_\_\_ Department (County) and \_\_\_\_\_ (Contractor). The parties agree as follows:

**Effective Date and Termination Date.** The effective date of this Contract shall be \_\_\_\_\_ or the date on which each party has signed this Contract, whichever is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when County accepts Contractor's completed performance, or on \_\_\_\_\_, \_\_\_\_\_, whichever date occurs last. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Contractor that has not been cured.

**Statement of Work.** Contractor shall perform the work described in Exhibit 1.

**Payment for Work.** County agrees to pay Contractor in accordance with Exhibit 1.

**Contract Documents.** This Contract includes Page 1-9 and Exhibits 1, 2, 3, 4, 5 and 6.

**CONTRACTOR DATA AND SIGNATURE**

Contractor Address:

Federal Tax ID# or Social Security #: \_\_\_\_\_

Is Contractor a nonresident alien?  Yes  No

Business Designation (check one):  Sole Proprietorship  Partnership  
 Corporation-for profit  Corporation-non-profit  Other, describe

A Federal tax ID number or Social Security number is required to be provided by the Contractor and shall be used for the administration of state, federal and local tax laws. Payment information shall be reported to the Internal Revenue Service under the name and Federal tax ID number or, if none, the Social Security number provided above.

**I have read this Contract including the attached Exhibits. I understand this Contract and agree to be bound by its terms.** NOTE: Contractor shall also sign Exhibits 3 and 4 and, if applicable, Exhibit 6.

\_\_\_\_\_  
Signature Title  
\_\_\_\_\_  
Name (please print) Date

**DESCHUTES COUNTY SIGNATURE**

Contracts with a maximum consideration of not greater than \$25,000 are not valid and not binding on the County until signed by the appropriate Deschutes County Department Head. Additionally, Contracts with a maximum consideration greater than \$25,000 but less than \$150,000 are not valid and not binding on the County until signed by the County Administrator or the Board of County Commissioners.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_ Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_

DESCHUTES COUNTY DIRECTOR OF \_\_\_\_\_ COUNTY ADMINISTRATOR

\_\_\_\_\_  
(Insert name)

## STANDARD TERMS AND CONDITIONS

1. **Time is of the Essence.** Contractor agrees that time is of the essence in the performance of this Contract.
2. **Compensation.** Payment for all work performed under this Contract shall be made in the amounts and manner set forth in Exhibit 1.
  - a. Payments shall be made to Contractor following County's review and approval of billings and deliverables submitted by Contractor.
  - b. All Contractor billings are subject to the maximum compensation amount of this contract.
  - c. Contractor shall not submit billings for, and County shall not pay, any amount in excess of the maximum compensation amount of this Contract, including any reimbursable expenses, (See Exhibit 5).
    - 1) If the maximum compensation amount is increased by amendment to this Contract, the amendment shall be signed by both parties and fully executed before Contractor performs work subject to the amendment.
    - 2) No payment shall be made for any services performed before the beginning date or after the expiration date of this contract.
  - d. Unless otherwise specifically provided in Exhibit 5, Contractor shall submit monthly invoices for work performed. The invoices shall describe all work performed with particularity and by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed.
  - e. The invoices also shall include the total amount invoiced to date by Contractor prior to the current invoice.
  - g. Prior to approval or payment of any billing, County may require and Contractor shall provide any information which County deems necessary to verify work has been properly performed in accordance with the Contract.
3. **Delegation, Subcontracts and Assignment.** Contractor shall not delegate or subcontract any of the work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of County.
  - a. Any delegation, subcontract, assignment, or transfer without prior written consent of County shall constitute a material breach of this contract.
  - b. Any such assignment or transfer, if approved, is subject to such conditions and provisions as the County may deem necessary.
  - c. No approval by the County of any assignment or transfer of interest shall be deemed to create any obligation of the County to increase rates of payment or maximum Contract consideration.
  - d. Prior written approval shall not be required for the purchase by the Contractor of articles, supplies and services which are incidental to the provision of services under this Contract that are necessary for the performance of the work.
  - e. Any subcontracts that the County may authorize shall contain all requirements of this contract, and unless otherwise specified by the County the Contractor shall be responsible for the performance of the subcontractor.
4. **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.
5. **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, if any.
6. **Early Termination.** This Contract may be terminated as follows:
  - a. Mutual Consent. County and Contractor, by mutual written agreement, may terminate this Contract at any time.
  - b. Party's Convenience. County or Contractor may terminate this Contract for any reason upon 30 calendar days written notice to the other party.

- c. For Cause. County may also terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County, under any of the following conditions:
  - 1) If funding from state or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services as required in this Contract.
  - 2) If state laws, regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
  - 3) In the event sufficient funds shall not be appropriated for the payment of consideration required to be paid under this Contract, and if County has no funds legally available for consideration from other sources.
  - 4) If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that the Contractor no longer meets requirements for such license or certificate.
- d. Contractor Default or Breach. The County, by written notice to the Contractor, may immediately terminate the whole or any part of this Contract under any of the following conditions:
  - 1) If the Contractor fails to provide services called for by this Contract within the time specified or any extension thereof.
  - 2) If the Contractor fails to perform any of the other requirements of this Contract or fails to pursue the work so as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from the County specifying such failure, the Contractor fails to correct such failure within 10 calendar days or such other period as the County may in writing authorize.
  - 3) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis.
- e. County Default or Breach.
  - 1) Contractor may terminate this Contract in the event of a breach of this Contract by the County. Prior to such termination, the Contractor shall give to the County written notice of the breach and intent to terminate.
  - 2) If the County has not entirely cured the breach within 10 calendar days of the date of the notice, then the Contractor may terminate this Contract at any time thereafter by giving written notice of termination.

**7. Payment on Early Termination.** Upon termination pursuant to paragraph 6, payment shall be made as follows:

- a. If terminated under subparagraphs 6 a. through c. of this Contract, the County shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. Provided however, County shall not pay Contractor for any obligations or liabilities incurred by Contractor after Contractor receives written notice of termination.
- b. If this Contract is terminated under subparagraph 6 d. of this Contract, County obligations shall be limited to payment for services provided in accordance with this Contract prior to the date of termination, less any damages suffered by the County.
- c. If terminated under subparagraph 6 e of this Contract 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. Specifically:
  - 1) with respect to services compensable on an hourly basis and authorized expenses actually incurred, County shall pay the amount due plus any interest within the limits set forth under ORS 293.462, less the amount of any claims County has against Contractor; and
  - 2) with respect to deliverable-based Work, the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by County, less previous amounts paid and any claim(s) that County has against Contractor.
  - 3) County's payment to Contractor under this subparagraph 7(c) is subject to the limitations set forth in paragraph 8 of this Contract, below.

**8. Remedies.** In the event of breach of this Contract the parties shall have the following remedies:

- a. Termination under subparagraphs 6 a. through c. of this Contract shall be without prejudice to any obligations or liabilities of either party already reasonably incurred prior to such termination.

- 1) Contractor may not incur obligations or liabilities after Contractor receives written notice of termination.
  - 2) Additionally, neither party shall be liable for any indirect, incidental, or consequential damages under this Contract or for any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- b. If terminated under subparagraph 6 d. of this Contract by the County due to a breach by the Contractor, County may pursue any remedies available at law or in equity.
    - 1) Such remedies may include, but are not limited to, termination of this contract, return of all or a portion of this Contract amount, payment of interest earned on this Contract amount, and declaration of ineligibility for the receipt of future contract awards.
    - 2) Additionally, County may complete the work either by 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 be liable to the County for the amount of the reasonable excess.
  - c. If amounts previously paid to Contractor exceed the amount due to Contractor under this Contract, Contractor shall repay any excess to County upon demand.
  - d. Neither County nor Contractor shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, riot, acts of God, or war where such cause was beyond reasonable control of County or Contractor, respectively; however, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. For any delay in performance as a result of the events described in this subparagraph, Contractor shall be entitled to additional reasonable time for performance that shall be set forth in an amendment to this Contract.
  - e. The passage of this Contract expiration date shall not extinguish or prejudice the County's or Contractor's right to enforce this Contract with respect to any default or defect in performance that has not been cured.
  - f. County's remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

**9. Contractor's Tender upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract unless County expressly directs otherwise in such notice of termination.

- a. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had this Contract been completed.
- b. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the work.

**10. Work Standard.**

- a. 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.
- b. For goods and services to be provided under this contract, Contractor agrees to:
  - 1) perform the work in a good, workmanlike, and timely manner using the schedule, materials, plans and specifications approved by County;
  - 2) comply with all applicable legal requirements;
  - 3) comply with all programs, directives, and instructions of County relating to safety, storage of equipment or materials;
  - 4) take all precautions necessary to protect the safety of all persons at or near County or Contractor's facilities, including employees of Contractor, County and any other contractors or subcontractors and to protect the work and all other property against damage.

**11. Drugs and Alcohol.** Contractor shall adhere to and enforce a zero tolerance policy for the use of alcohol and the unlawful selling, possession or use of controlled substances while performing work under this Contract.

**12. Insurance.** Contractor shall provide insurance in accordance with Exhibit 2 attached hereto and incorporated by reference herein.

- 13. Expense Reimbursement.** If the consideration under this Contract provides for the reimbursement of Contractor for expenses, in addition to Exhibit 5, Exhibit 1 shall state that Contractor is or is not entitled to reimbursement for such expenses.
- a. County shall only reimburse Contractor for expenses reasonably and necessarily incurred in the performance of this contract.
  - b. Expenses reimbursed shall be at the actual cost incurred; including any taxes paid, and shall not include any mark-up unless the mark-up on expenses is specifically agreed to in this Contract.
  - c. The cost of any subcontracted work approved in this Contract shall not be marked up.
  - d. Contractor shall not bill County for any time expended to complete the documents necessary for reimbursement of expenses or for payment under this contract.
  - e. The limitations applicable to reimbursable expenses are set forth in Exhibit "5", attached hereto and by reference incorporated herein.
- 14. Criminal Background Investigations.** Contractor understands that Contractor and Contractor's employees and agents are subject to periodic criminal background investigations by County and, if such investigations disclose criminal activity not disclosed by Contractor, such non-disclosure shall constitute a material breach of this Contract and County may terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County.
- 15. Confidentiality.** As applicable, Contractor shall maintain confidentiality of information obtained pursuant to this Contract as follows:
- 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. The Contractor shall ensure that its agents, employees, officers and subcontractors with access to County and Contractor records understand and comply with this confidentiality provision.
  - c. Contractor shall treat all information as to personal facts and circumstances obtained on Medicaid eligible individuals as privileged communication, shall hold such information confidential, and shall not disclose such information without the written consent of the individual, his or her attorney, the responsible parent of a minor child, or the child's guardian, except as required by other terms of this Contract.
  - d. Nothing prohibits the disclosure of information in summaries, statistical information, or other form that does not identify particular individuals.
  - e. Contractor shall at all times comply with all of the transaction, security and privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA") and all other state and federal laws and regulations related to the privacy and/or security of personally identifiable health information.
  - f. Contractor shall cooperate with County in the adoption of policies and procedures for maintaining the privacy and security of personally identifiable health records and for conducting transactions pursuant to the requirements of HIPAA and other applicable state and federal laws and regulations..
  - g. This Contract may be amended in writing in the future to incorporate additional requirements related to compliance with HIPAA or other applicable state or federal laws and/or regulations..
- If Contractor receives or transmits protected health information, Contractor shall enter into a Business Associate Agreement with County, which, if attached hereto, shall become a part of this Contract. To the extent any provision of the Business Associate Agreement is inconsistent with a provision of this paragraph 15, the Business Associate Agreement shall govern.
- 16. Reports.** 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 Contractor shall be supported by documentation in Contractor's possession from third parties.
- 17. Access to Records.** Contractor shall maintain fiscal records and all other records pertinent to this Contract.
- a. All fiscal records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken.
    - 1) All records shall be retained and kept accessible for at least three years following the final payment made under this Contract or all pending matters are closed, whichever is later.

- 2) If an audit, litigation or other action involving this Contract is started before the end of the three year period, the records shall be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is later.
- b. County and its authorized representatives shall have the right to directly access all of Contractor's books, documents, papers and records related to this Contract for the purpose of conducting audits and examinations and making copies, excerpts and transcripts.
  - 1) These records also include licensed software and any records in electronic form, including but not limited to computer hard drives, tape backups and other such storage devices. County shall reimburse Contractor for Contractor's reasonable cost of preparing copies.
  - 2) At Contractor's expense, the County, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives, shall have license to enter upon Contractor's premises to access and inspect the books, documents, papers, computer software, electronic files and any other records of the Contractor which are directly pertinent to this Contract.
  - 3) If Contractor's dwelling is Contractor's place of business, Contractor may, at Contractor's expense, make the above records available at a location acceptable to the County.

**18. Ownership of Work.** All work of Contractor that results from this Contract (the "Work Product") is the exclusive property of County.

- a. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed author.
- b. If, for any reason, the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.
- c. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County.
- d. Contractor forever waives any and all rights relating to Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- e. County shall have no rights in any pre-existing work product of Contractor provided to County by Contractor in the performance of this Contract except an irrevocable, non-exclusive, perpetual, royalty-free license to copy, use and re-use any such work product. .
- f. If this Contract is terminated prior to completion, and County is not in default, County, in addition to any other rights provided by this Contract, may require Contractor to transfer and deliver all partially completed work products, reports or documentation that Contractor has specifically developed or specifically acquired for the performance of this Contract.
- g. In the event that Work Product is deemed Contractor's Intellectual Property and not "work made for hire," Contractor hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on County's behalf.
- h. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the County's behalf and in the name of the County, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on County's behalf.

**19. County Code Provisions.** Except as otherwise specifically provided, the provisions of Deschutes County Code, Section 2.37.150 are incorporated herein by reference. Such code section may be found at the following URL address: . To the extent any provision of DCC 2.37.150 is inconsistent with a provision of this Contract, DCC 2.37.150 shall govern.

**20. Partnership.** County is not, by virtue of this contract, a partner or joint venturer with Contractor in connection with activities carried out under this contract, and shall have no obligation with respect to Contractor's debts, taxes, or any other liabilities of each and every nature.

**21. Indemnity and Hold Harmless.**

- a. To the fullest extent authorized by law Contractor shall defend, save, hold harmless and indemnify the County and its current and former officers, departments, employees and agents from and against any and all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature, and by



whomever brought, resulting from, arising out of or relating to the activities of Contractor or its current or former officers, employees, contractors, or agents, including without limitation any claim that any work, work product or other tangible or intangible items delivered to County by Contractor may be the subject of protection under any state or federal intellectual property law or doctrine, or that the County's use thereof infringes any patent, copyright, trade secret, trademark, trade dress, mask work utility design or other proprietary right of any third party.

- b. Contractor shall have control of the defense and settlement of any claim that is subject to subparagraph a of this paragraph; however neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of Deschutes County or any department or agency thereof, nor purport to act as legal representative of the County or any of its departments or agencies without first receiving from the County's Legal Counsel, in a form and manner determined appropriate by the County's Legal Counsel, authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of the County without the approval of the County's Legal Counsel.
- c. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify Contractor and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees or agents under this Contract.

**22. Waiver.**

- a. County's delay in exercising, or failure to exercise, any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- b. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

**23. Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

- a. Any claim, action, suit or proceeding (collectively, "Claim") between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- b. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. The parties agree that the UN Convention on International Sales of Goods shall not apply.

**24. Severability.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held invalid, unless doing so would materially frustrate the parties' intent in entering into this Contract

**25. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

**26. 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, facsimile, 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 sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- c. 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 or delivered as follows:

To Contractor:

\*

Fax No.

To County:

(Insert Name)

County Administrator

1300 NW Wall Street, Suite 200

Bend, Oregon 97701

Fax No. 541-385-3202

**27. 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.

**28. Identity Theft Protection.** Contractor and subcontractors shall comply with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 et seq.).

**29. Survival.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 4, 5, 8, 9, 15, 17, 18, 20-27, 28 and 30.

**30. Representations and Warranties.**

- a. **Contractor's Representations and Warranties.** Contractor represents and warrants to County that:
  - 1) Contractor has the power and authority to enter into and perform this Contract;
  - 2) This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
  - 3) 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 to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession in the state of Oregon;
  - 4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
  - 5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and
  - 6) Contractor's making and performance of this Contract do not and will not violate any provision of any applicable law, rule or regulation or order of any court, regulatory commission, board or other administrative agency.
  - 7) Contractor's making and performance of this Contract do not and will not violate any provision of any other contract, agreement to which Contractor is a party, nor materially impair any legal obligation of Contractor to any person or entity.
- b. **Warranties Cumulative.** The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided, whether express or implied at law.

**31. Amendment.**

a. This Contract may be unilaterally modified by County to accommodate a change in available funds, so long as such modification does not impose an unreasonable hardship upon Contractor or reduce Contractor's compensation for work Contractor actually performs or Contractor's authorized expenses actually incurred. With respect to deliverable-based Work, Contractor's compensation shall not be deemed reduced by a modification of this contract, so long as Contractor is paid the sum designated for performing the Work originally contemplated by this Contract multiplied by the percentage of such originally contemplated Work that Contractor performs under the modified Contract.

b. With the exception of subparagraph 31(a), above, this Contract (including any exhibits) may only be amended upon written agreement by both parties, and shall not be effective until both parties have executed such written agreement. Any alleged or claimed amendment that is not performed in compliance with this paragraph 31 shall be void and of no effect.

**32. Representation and Covenant.**

a. Contractor represents and warrants that Contractor has complied with the tax laws of this state, and where applicable, the laws of Deschutes County, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.

b. Contractor covenants to continue to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, during the term of this contract.

c. Contractor acknowledges that failure by Contractor to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, at any time before Contractor has executed the contract or during the term of the contract is and will be deemed a default for which Deschutes County may terminate the contract and seek damages and/or other relief available under the terms of the contract or under applicable law.

**EXHIBIT 1**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 20\_\_ -**  
**STATEMENT OF WORK, COMPENSATION**  
**PAYMENT TERMS and SCHEDULE**

**1. Contractor shall perform the following work:**

- a.
- b.

**2. County Services.** County shall provide Contractor, at county's expense, with material and services described as follows:

- a.
- b.

**3. Consideration.**

- a. County shall pay Contractor on a fee-for-service basis at the rate of \_\_\_\_\_.
- b. Contractor shall be entitled to reimbursement for expenses as set forth in Exhibit 5  
 **YES**    **NO** [Check one]

**4. The maximum compensation.**

- a. The maximum compensation under this contract, including allowable expenses, is \$\_\_\_\_\_.
- b. Contractor shall not submit invoices for, and County shall not pay for any amount in excess of the maximum compensation amount set forth above.
  - 1) If this maximum compensation amount is increased by amendment of this contract, the amendment shall be fully effective before contractor performs work subject to the amendment.
  - 2) Contractor shall notify County in writing of the impending expiration of this Contract thirty (30) calendar days prior to the expiration date.

**5. Schedule of Performance or Delivery.**

- a. County's obligation to pay depends upon Contractor's delivery or performance in accordance with the following schedule:
- b. County will only pay for completed work that conforms to this schedule.

**EXHIBIT 2  
 DESCHUTES COUNTY SERVICES CONTRACT  
 Contract No. 20\_\_ -  
INSURANCE REQUIREMENTS**

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

**Contractor Name** \_\_\_\_\_

**Workers Compensation** insurance in compliance with ORS 656.017, requiring Contractor and all subcontractors to provide workers' compensation coverage for all subject workers, or provide certification of exempt status. Worker's Compensation Insurance to cover claims made under Worker's Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with Coverage B Employer's Liability coverage all at the statutory limits. In the absence of statutory limits the limits of said Employer's Liability coverage shall be not less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured's right of subrogation against County.

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

Per Occurrence limit	Annual Aggregate limit
<input type="checkbox"/> \$1,000,000	<input type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input type="checkbox"/> \$3,000,000	<input type="checkbox"/> \$5,000,000

Professional Liability insurance covers damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail coverage" for claims made within two years after the contract work is completed or the facts underlying County's claim could reasonably have been discovered, whichever is later.

Required by County                       Not required by County (one box must be checked)

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

<u>Per Single Claimant and Incident</u>	<u>All Claimants Arising from Single Incident</u>
<input type="checkbox"/> \$1,000,000	<input type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input type="checkbox"/> \$3,000,000	<input type="checkbox"/> \$5,000,000

Commercial General Liability insurance includes coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products, completed operations and contractual liability. The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance or self insurance of County, its officers, employees or agents. Each such policy obtained by Contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide County with the right, but not the obligation, to engage its own attorney for the purpose of defending any legal action against County, its officers, agents, or employees, and that Contractor shall indemnify County for costs and expenses, including reasonable attorneys' fees, incurred or arising out of the defense of such action.

The policy shall be endorsed to name ***Deschutes County, its officers, agents, employees and volunteers as an additional insured***. The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit. The Contractor shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the County are maintained. Construction contracts may include aggregate limits that apply on a "per location" or "per project" basis. The additional insurance protection shall extend equal protection to County as to Contractor or subcontractors and shall not be limited to vicarious liability only or any similar limitation. To the extent any aspect

of this Paragraph shall be deemed unenforceable, then the additional insurance protection to County shall be narrowed to the maximum amount of protection allowed by law.

Required by County       Not required by County      (One box must be checked)

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

Per Occurrence

- \$500,000
- \$1,000,000
- \$2,000,000

Automobile Liability insurance includes coverage for bodily injury and property damage resulting from operation of a motor vehicle. Commercial Automobile Liability Insurance shall provide coverage for *any* motor vehicle (symbol 1 on some insurance certificates) driven by or on behalf of Contractor during the course of providing services under this contract. Commercial Automobile Liability is required for contractors that own business vehicles registered to the business. Examples include: plumbers, electricians or construction contractors. An Example of an acceptable personal automobile policy is a contractor who is a sole proprietor that does not own vehicles registered to the business.

Required by County       Not required by County      (one box must be checked)

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

**Certificate of Insurance Required.** Contractor shall furnish a current Certificate of Insurance to the County with the signed Contract. Contractor shall notify the County in writing at least 30 days in advance of any cancellation, termination, material change, or reduction of limits of the insurance coverage. The Certificate shall also state the deductible or, if applicable, the self-insured retention level. Contractor shall be responsible for any deductible or self-insured retention. If requested, complete copies of insurance policies shall be provided to the County. Any violation by Contractor of this Certificate of Insurance provision shall, at the election of County, constitute a material breach of the Contract.

Risk Management review

Date

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT 3**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 20\_\_ -**  
**CERTIFICATION STATEMENT FOR CORPORATION**  
**OR INDEPENDENT CONTRACTOR**

**NOTE: Contractor Shall Complete A or B in addition to C below:**

**A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY OR A PARTNERSHIP.**

<b>I certify under penalty of perjury that Contractor is a [check one]:</b>		
<input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Partnership   authorized to do business in the State of Oregon.		
_____	_____	_____
Signature	Title	Date

**B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR.**

<b>Contractor certifies under penalty of perjury that the following statements are true:</b>	
1. If Contractor performed labor or services as an independent Contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), <b><u>and</u></b>	
2. Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business registered with the State of Oregon, <b><u>and</u></b>	
3. All of the statements checked below are true.	
<b>NOTE: Check all that apply. <u>You shall check at least three (3)</u> - to establish that you are an Independent Contractor.</b>	
___ A.	The labor or services I perform are primarily carried out at a location that is separate from my residence or primarily carried out in a specific portion of my residence that is set aside as the location of the business.
___ B.	I bear the risk of loss related to the business or provision of services as shown by factors such as: (a) fixed-price agreements; (b) correcting defective work; (c) warranties over the services or (d) indemnification agreements, liability insurance, performance bonds or professional liability insurance.
___ C.	I have made significant investment in the business through means such as: (a) purchasing necessary tools or equipment; (b) paying for the premises or facilities where services are provided; or (c) paying for licenses, certificates or specialized training.
___ D.	I have the authority to hire other persons to provide or to assist in providing the services and if necessary to fire such persons.
___ E.	Each year I perform labor or services for at least two different persons or entities or I routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
_____	_____
Contractor Signature	Date

**C. Representation and Warranties.**

**Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor's knowledge:**

1. Contractor has the power and authority to enter into and perform this contract;
2. This contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
3. The services under this contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and
4. Contractor shall, at all times during the term of this contract, be qualified, professionally competent, and duly licensed to perform the services.
5. To the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4),
6. Contractor understands that Contractor is responsible for any federal or state taxes applicable to any consideration and payments paid to Contractor under this contract; and
7. Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date



**EXHIBIT 4**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 20\_\_ -**  
**Workers' Compensation Exemption Certificate**

(To be used only when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (check the appropriate box):

**SOLE PROPRIETOR**

- Contractor is a sole proprietor, and
- Contractor has no employees, and
- Contractor shall not hire employees to perform this contract.

**CORPORATION - FOR PROFIT**

- Contractor's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest\* in the corporation, and
- The officers and directors shall perform all work. Contractor shall not hire other employees to perform this contract.

**CORPORATION - NONPROFIT**

- Contractor's business is incorporated as a nonprofit corporation, and
- Contractor has no employees; all work is performed by volunteers, and
- Contractor shall not hire employees to perform this contract.

**PARTNERSHIP**

- Contractor is a partnership, and
- Contractor has no employees, and
- All work shall be performed by the partners; Contractor shall not hire employees to perform this contract, and
- Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

**LIMITED LIABILITY COMPANY**

- Contractor is a limited liability company, and
- Contractor has no employees, and
- All work shall be performed by the members; Contractor shall not hire employees to perform this contract, and
- If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

\*NOTE: Under OAR 436-050-050 a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation or, if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

\*\*NOTE: Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated. Consult with County Counsel before an exemption request is accepted from a contractor who shall perform construction work.

\_\_\_\_\_  
Contractor Printed Name

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Contractor Title

\_\_\_\_\_  
Date

**EXHIBIT 5**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 20\_\_ - \_\_\_\_**  
**Expense Reimbursement**

1. **Travel and Other Expenses.** (When travel and other expenses are reimbursed.)
  - a. It is the policy of the County that travel expenses shall be allowed only when the travel is essential to the normal discharge of County responsibilities.
    - 1) All travel shall be conducted in the most efficient and cost effective manner resulting in the best value to the County.
    - 2) Travel expenses shall be reimbursed for official County business only.
    - 3) County shall not reimburse Contractor for any item that is not otherwise available for reimbursement to an employee of Deschutes County per Deschutes County Finance Policy F-1, "REIMBURSEMENT FOR MISCELLANEOUS EXPENSES AND EXPENSES INCURRED WHILE TRAVELING ON COUNTY BUSINESS," dated 11/8/06.
    - 4) County may approve a form other than the County Employee Reimbursement Form for Contractor to submit an itemized description of travel expenses for payment.
    - 5) Personal expenses shall not be authorized at any time.
    - 6) All expenses are included in the total maximum contract amount.
  - b. Travel expenses shall be reimbursed only in accordance with rates approved by the County and only when the reimbursement of expenses is specifically provided for in Exhibit 1, paragraph 3 of this contract.
  - c. The current approved rates for reimbursement of travel expenses are set forth in the above described policy.
  - d. County shall not reimburse for any expenses related to alcohol consumption or entertainment.
  - e. Except where noted, detailed receipts for all expenses shall be provided.
  - f. Charge slips for gross amounts are not acceptable.
  - g. County shall not reimburse Contractor for any item that is not otherwise available for reimbursement to an employee of Deschutes County.
2. **Approved reimbursements:**
  - a. Mileage. Contractor shall be entitled to mileage for travel in a private automobile while Contractor is acting within the course and scope of Contractor's duties under this Contract and driving over the most direct and usually traveled route to and from Bend, Oregon.
    - 1) Reimbursement for mileage shall be equal to but not exceed those set by the United States General Services Administration ("GSA") and are subject to change accordingly.
    - 2) To qualify for mileage reimbursement, Contractor shall hold a valid, current driver's license for the class of vehicle to be driven and carry personal automobile liability insurance in amounts not less than those required by this contract.
    - 3) No mileage reimbursement shall be paid for the use of motorcycles or mopeds.
  - b. Meals.
    - 1) Any reimbursement for meals shall be for actual cost of meals incurred by Contractor while acting within the course and scope of Contractor's duties under this contract.
    - 2) For purposes of calculating individual meals where the Contractor is entitled only to a partial day reimbursement, the following maximum allocation of the meal expenses applies:
      - a) Breakfast, \$10;
      - b) Lunch, \$12;
      - c) Dinner, \$22.
    - 3) Except in the event of necessary overnight travel as provided below, partial day meal expenses shall be reimbursed as follows and only while Contractor is acting within the course and scope of Contractor's duties under this contract:
      - a) Breakfast expenses are reimbursable if Contractor is required to travel more than two (2) hours: before the start of Contractor's regular workday (i.e. 8:00 a.m.).
      - b) Lunch expenses are reimbursable only if Contractor is required to travel overnight and begins the journey before 11:00 am or ends the journey after 11:00 a.m.

- c) Dinner expenses are reimbursable only if Contractor is required to travel more than two (2) hours after Contractor's regular workday (i.e. 5:00 p.m.).
- 4) Breakfast and dinner expenses are reimbursable during Contractor's necessary overnight travel while acting within the course and scope of Contractor's duties under this contract, shall not exceed those set by the GSA, and are subject to change accordingly.

c. Lodging.

- 1) County shall reimburse Contractor for Contractor's actual cost of lodging necessary to provide service to the County and shall not exceed the maximum lodge rate set by the GSA for Bend, Oregon.
- 2) Reimbursement rates for lodging are not considered "per diem" and receipts are required for reimbursement.

- d County shall not reimburse Contractor in excess of the lowest fair for any airline ticket or vehicle rental charges.

**3. Exceptions.** Contractor shall obtain separate written approval of the County Administrator for any exceptions to the expense items listed above prior to incurring any expense for which reimbursement shall be sought.

**Exhibit 6**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 20\_\_ -**  
**Compliance with provisions, requirements of funding source and**  
**Federal and State laws, statutes, rules, regulations, executive orders and policies.**

**Conflicts of Interest**

**Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor's knowledge:**

1. If Contractor is currently performing work for the County, State of Oregon or federal government, Contractor, by signature to this Contract, declares and certifies that Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employee agency (County State or Federal) would prohibit Contractor's Work under this Contract. Contractor is not an "officer," "employee," or "agent" of the County, as those terms are used in ORS 30.265.
2. No federally appropriated funds have been paid or shall be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - a. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Contractor agrees to complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.
    - 1) Standard Form-LLL and instructions are located in 45 CFR Part 93 Appendix B.
    - 2) If instructions require filing the form with the applicable federal entity, Contractor shall then as a material condition of this Contract also file a copy of the Standard Form-LLL with the Department.
    - 3) This filing shall occur at the same time as the filing in accordance with the instructions.
  - b. Contractor understands this certification is a material representation of fact upon which the County and the Department has relied in entering into this Contract. Contractor further understands that submission of this certification is a prerequisite, imposed by 31 USC 1352 for entering into this Contract.
  - c. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - d. Contractor shall include the language of this certification in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
  - e. Contractor is solely responsible for all liability arising from a failure by Contractor to comply with the terms of this certification.
  - f. Contractor promises to indemnify County for any damages suffered by County as a result of Contractor's failure to comply with the terms of this certification.
3. Contractor understands that, if this Contract involves federally appropriated funds, this certification is a material representation of facts upon which reliance was placed when this Contract was made or entered into, submission of this certification is a prerequisite for make or entering into this Contract imposed by Section 1352, Title 31, U.S. Code and that any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date