



REQUEST FOR PROPOSALS #2017-22

FOR

Tourism Marketing Agency of Record

BOARD OF COUNTY COMMISSIONERS

JIM BERNARD, Chair

SONYA FISCHER, Commissioner

KEN HUMBERSTON, Commissioner

PAUL SAVAS, Commissioner

MARTHA SCHRADER, Commissioner

**Donald Krupp
County Administrator**

**George Marlton
Procurement Division Director**

**Patricia Bride
Sr. Procurement & Contract Analyst**

PROPOSAL CLOSING DATE, TIME AND LOCATION

DATE: May 17, 2017

TIME: 2:00 PM, Pacific Time

**PLACE: Clackamas County Procurement
Clackamas County Public Services Building
2051 Kaen Road, Oregon City, OR 97045**

SCHEDULE

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| Request for Proposals Issued..... | April, 27 2017 |
| Protest of Specifications Deadline..... | May 9, 2017 5:00 PM, Pacific Time |
| Deadline to Submit Clarifying Questions..... | May 11, 2017, 5:00 PM, Pacific Time |
| Request for Proposals Closing Date and Time..... | May 17, 2017, 2:00 PM, Pacific Time |
| Tentative Date for Proposal Presentations..... | June 5-8, 2017 |
| Deadline to Submit Protest of Award..... | Five (5) days from the Intent to Award |
| Anticipated contract start date..... | July 1, 2017 |

TABLE OF CONTENTS

| | Page |
|--|------|
| Section 1 – Notice of Request for Proposals | 1 |
| Section 2 – Instructions to Proposers..... | 2 |
| Section 3 – Scope of Work | 7 |
| Section 4 – Evaluation and Selection Criteria | 12 |
| Section 5 – Proposal Content (Including Proposal Certification)..... | 13 |
| Section 6 – Sample Contract..... | 16 |

SECTION 1
NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that Clackamas County through its Board of County Commissioners, will receive sealed Proposals per specifications until **2:00 PM, May 17, 2017** (“Closing”), to provide: Tourism Marketing Agency of Record. No Proposals will be received or considered after that time.

The resulting contract from this RFP will have an initial term of one year through June 30, 2018, with four (4) additional (1) year optional extensions thereafter subject to mutual agreement of the parties.

Proposal packets are available from 7:00 AM to 6:00 PM Monday through Thursday at Clackamas County Procurement Division, Clackamas County Public Services Building, 2051 Kaen Road, Oregon City, OR 97045, telephone (503) 742-5444 or may be obtained at <http://www.clackamas.us/bids/>. Sealed Proposals are to be sent to Clackamas County Procurement Division at the above Kaen Road address.

Contact Information Questions and Clarifications

Procurement Process Questions: Patricia Bride, pbride@clackamas.us, (503) 742-5447

The Board of County Commissioners reserves the right to reject any and all Proposals not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any and all Proposals upon the finding that it is in the public interest to do so and to waive any and all informalities in the public interest. In the award of the contract, the Board of County Commissioners will consider the element of time, will accept the Proposal or Proposals which in their estimation will best serve the interests of Clackamas County and will reserve the right to award the contract to the contractor whose Proposal shall be best for the public good.

SECTION 2 INSTRUCTIONS TO PROPOSERS

Clackamas County (“County”) reserves the right to reject any and all Proposals received as a result of this RFP. County Local Contract Review Board Rules (“LCRB”) govern the procurement process for the County.

2.1 Modification or Withdrawal of Proposal: Any Proposal may be modified or withdrawn at any time prior to the Closing deadline, provided that a written request is received by the County Procurement Division Director, prior to the Closing. The withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new Proposal.

2.2 Requests for Clarification and Requests for Change: Proposers may submit questions regarding the specifications of the RFP. Questions must be received in writing on or before 5:00 p.m. (Pacific Time), on the date, indicated in the Schedule, at the Procurement Division address as listed in Section 1 of this RFP. Requests for changes must include the reason for the change and any proposed changes to the requirements. The purpose of this requirement is to permit County to correct, prior to the opening of Proposals, RFP terms or technical requirements that may be unlawful, improvident or which unjustifiably restrict competition. County will consider all requested changes and, if appropriate, amend the RFP. County will provide reasonable notice of its decision to all Proposers that have provided an address to the Procurement Division for this procurement. No oral or written instructions or information concerning this RFP from County managers, employees or agents to prospective Proposers shall bind County unless included in an Addendum to the RFP.

2.3 Protests of the RFP/Specifications: Protests must be in accordance with LCRB C-047-0730. Protests of Specifications must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, or within three (3) business days of issuance of any addendum, at the Procurement Division address listed in Section 1 of this RFP. Protests may not be faxed. Protests of the RFP specifications must include the reason for the protest and any proposed changes to the requirements.

2.4 Addenda: If any part of this RFP is changed, an addendum will be provided to Proposers that have provided an address to the Procurement Division for this procurement. It shall be Proposers responsibility to regularly check the Bids and Contract Information page at <http://www.clackamas.us/bids/> for any published Addenda or response to clarifying questions.

2.5 Submission of Proposals: All Proposals must be submitted in a sealed envelope bearing on the outside, the name and address of the Proposer, the project title, and Closing date/time. Proposals must be submitted in accordance with Section 5.

All Proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this RFP. Proposals that include orders or qualifications may be rejected as irregular. All Proposals must include a signature that affirms the Proposer’s intent to be bound by the Proposal (may be on cover letter, on the Proposal, or the Proposal Response form) shall be signed. If a Proposal is submitted by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the Proposal is submitted by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The Proposals will be considered by the County to be submitted in confidence and are not subject to public disclosure until the notice of intent to award has been issued.

No late Proposals will be accepted. Proposals submitted after the Closing will be considered late and will be returned unopened. Proposals may not be submitted by telephone or fax.

2.6 Post-Selection Review and Protest of Award: County will name the apparent successful Proposer in a “Notice of Intent to Award” letter. Identification of the apparent successful Proposer is procedural only and creates no right of the named Proposer to award of the contract. Competing Proposers will be notified in writing of the selection of the apparent successful Proposer(s) and shall be given five (5) calendar days from the date on the “Notice of Intent to Award” letter to review the file at the Procurement Division office and file a written protest of award, pursuant to LCRB C-047-0740. Any award protest must be in writing and must be delivered by hand-delivery or mail to the address for the Procurement Division as listed in Section 1 of this RFP.

Only actual proposers may protest if they believe they have been adversely affected because the proposer would be eligible to be awarded the contract in the event the protest is successful. The basis of the written protest must be in accordance with ORS 279B.410 and shall specify the grounds upon which the protest is based. In order to be an adversely affected proposer with a right to submit a written protest, a proposer must be next in line for award, i.e. the protester must claim that all higher rated proposers are ineligible for award because they are non-responsive or non-responsible.

County will consider any protests received and:

- a. reject all protests and proceed with final evaluation of, and any allowed contract language negotiation with, the apparent successful Proposer and, pending the satisfactory outcome of this final evaluation and negotiation, enter into a contract with the named Proposer; OR
- b. sustain a meritorious protest(s) and reject the apparent successful Proposer as nonresponsive, if such Proposer is unable to demonstrate that its Proposal complied with all material requirements of the solicitation and Oregon public procurement law; thereafter, County may name a new apparent successful Proposer; OR
- c. reject all Proposals and cancel the procurement.

2.7 Acceptance of Contractual Requirements: Failure of the selected Proposer to execute a contract and deliver required insurance certificates within ten (10) calendar days after notification of an award may result in cancellation of the award. This time period may be extended at the option of County.

2.8 Public Records: Proposals are deemed confidential until the “Notice of Intent to Award” letter is issued. This RFP and one copy of each original Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, will be kept and made a part of a file or record which will be open to public inspection. If a Proposal contains any information that is considered a **TRADE SECRET** under ORS 192.501(2), **SUCH INFORMATION MUST BE LISTED ON A SEPARATE SHEET CAPABLE OF SEPARATION FROM THE REMAINING PROPOSAL AND MUST BE CLEARLY MARKED WITH THE FOLLOWING LEGEND:**

“This information constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” ORS 192.500(1). Therefore, non-disclosure of documents, or any portion of a document submitted as part of a Proposal, may depend upon official or judicial determinations made pursuant to the Public Records Law.

2.9 Investigation of References: County reserves the right to investigate all references in addition to those supplied references and investigate past performance of any Proposer with respect to its successful performance of similar services, its compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, its lawful payment of subcontractors and workers, and any

other factor relevant to this RFP. County may postpone the award or the execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation.

2.10 RFP Proposal Preparation Costs and Other Costs: Proposer costs of developing the Proposal, cost of attendance at an interview (if requested by County), or any other costs are entirely the responsibility of the Proposer, and will not be reimbursed in any manner by County.

2.11 Clarification and Clarity: County reserves the right to seek clarification of each Proposal, or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted initially in the most complete, clear, and favorable manner possible.

2.12 Right to Reject Proposals: County reserves the right to reject any or all Proposals or to withdraw any item from the award if such rejection or withdrawal would be in the public interest, as determined by County.

2.13 Cancellation: County reserves the right to cancel or postpone this RFP at any time or to award no contract.

2.14 Proposal Terms: All Proposals, including any price quotations, will be valid and firm through a period of ninety (90) calendar days following the Closing date. County may require an extension of this firm offer period. Proposers will be required to agree to the longer time frame in order to be further considered in the procurement process.

2.15 Oral Presentations: At County's sole option, Proposers may be required to give an oral presentation of their Proposals to County, a process which would provide an opportunity for the Proposer to clarify or elaborate on the Proposal but will in no material way change Proposer's original Proposal. If the evaluating committee requests presentations, the Procurement Division will schedule the time and location for said presentation. Any costs of participating in such presentations will be borne solely by Proposer and will not be reimbursed by County. **Note:** Oral presentations are at the discretion of the evaluating committee and may not be conducted; therefore, **written Proposals should be complete.**

2.16 Usage: It is the intention of County to utilize the services of the successful Proposer(s) to provide services as outlined in the below Scope of Work.

2.17 Sample Contract: Submission of a Proposal in response to this RFP indicates Proposer's willingness to enter into a contract containing substantially the same terms listed in Exhibit A – Sample Contract, attached hereto and made a part hereof. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 2.2 or 2.3 of the Instructions to Proposers Section of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP. This RFP and all supplemental information in response to this RFP will be a binding part of the final contract.

2.18 Review for Responsiveness: Upon receipt of all Proposals, the Procurement Division or designee will determine the responsiveness of all Proposals before submitting them to the evaluation committee. If a Proposal is incomplete or non-responsive in significant part or in whole, it will be rejected and will not be submitted to the evaluation committee. County reserves the right to determine if an inadvertent error is solely clerical or is a minor informality which may be waived, and then to determine if an error is grounds for disqualifying a Proposal. The Proposer's contact person identified in the Proposal will be notified, identifying the reason(s) the Proposal is non-responsive. One copy of the Proposal will be archived and all others discarded.

2.19 RFP Incorporated into Contract: This RFP will become part of the Contract between County and the selected contractor(s). The contractor(s) will be bound to perform according to the terms of this RFP, their Proposal(s), and the terms of the Sample Contract.

2.20 Communication Blackout Period: Except as called for in this RFP, Proposers may not communicate with members of the Evaluation Committee about the RFP until the apparent successful Proposer is selected, and all protests, if any, have been resolved.

2.21 Prohibition on Commissions and Subcontractors: County will contract directly with persons/entities capable of performing the requirements of this RFP. Contractors must be represented directly. Participation by brokers or commissioned agents will not be allowed during the Proposal process. Contractor shall not use subcontractors to perform the Work unless specifically pre-authorized in writing to do so by the County. Contractor represents that any employees assigned to perform the Work, and any authorized subcontractors performing the Work, are fully qualified to perform the tasks assigned to them, and shall perform the Work in a competent and professional manner. Contractor shall not be permitted to add on any fee or charge for subcontractor Work. Contractor shall provide if requested, any documents relating to subcontractor's qualifications to perform required Work.

2.22 Ownership of Proposals: All Proposals in response to this RFP are the sole property of County, and subject to the provisions of ORS 192.410-192.505 (Public Records Act).

2.23 Clerical Errors in Awards: County reserves the right to correct inaccurate awards resulting from its clerical errors.

2.24 Rejection of Qualified Proposals: Proposals may be rejected in whole or in part if they attempt to limit or modify any of the terms, conditions, or specifications of the RFP or the Sample Contract.

2.25 Collusion: By responding, the Proposer states that the Proposal is not made in connection with any competing Proposer submitting a separate response to the RFP, and is in all aspects fair and without collusion or fraud. Proposer also certifies that no officer, agent, elected official, or employee of County has a pecuniary interest in this Proposal.

2.26 Evaluation Committee: Proposals will be evaluated by a committee consisting of representatives from County and potentially external representatives. County reserves the right to modify the Evaluation Committee make-up in its sole discretion.

2.27 Commencement of Work: The contractor shall commence no work until all insurance requirements have been met, the Protest of Awards deadline has been passed, any protest have been decided, a contract has been fully executed, and a Notice to Proceed has been issued by County.

2.28 Best and Final Offer: County may request best and final offers from those Proposers determined by County to be reasonably viable for contract award. However, County reserves the right to award a contract on the basis of initial Proposal received. Therefore, each Proposal should contain the Proposer's best terms from a price and technical standpoint. Following evaluation of the best and final offers, County may select for final contract negotiations/execution the offers that are most advantageous to County, considering cost and the evaluation criteria in this RFP.

2.29 Nondiscrimination: The successful proposer agrees that, in performing the work called for by this RFP and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

2.30 Intergovernmental Cooperative Procurement Statement: Pursuant to ORS 279A and LCRB, other public agencies shall have the ability to purchase the awarded goods and services from the awarded contractor(s) under terms and conditions of the resultant contract. Any such purchases shall be between the contractor and the participating public agency and shall not impact the contractor's obligation to County. Any estimated purchase volumes listed herein do not include other public agencies and County makes no guarantee as to their participation. Any proposer, by written notification included with their Proposal, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies. County grants to any and all public serving governmental agencies, authorization to purchase equivalent services or products described herein at the same submitted unit bid price, but only with the consent of the contractor awarded the contract by the County.

SECTION 3 SCOPE OF WORK

3.1. INTRODUCTION

Clackamas County Tourism & Cultural Affairs (“CCTCA”) will enter into a contract with the selected agency of record to provide a continuity of integrated marketing support, with annual review of contract terms and compensation.

Please direct all Technical/Specifications or Procurement Process Questions to the indicated representative referenced in the Notice of Request for Proposals.

3.2 BACKGROUND

Clackamas County Tourism & Cultural Affairs (“CCTCA”) is the recognized Destination Marketing Organization (“DMO”) for Clackamas County, branded as Oregon's Mt. Hood Territory (“OHMT”). The mission of CCTCA is to increase overnight stays and encourage visitors to linger longer in Clackamas County. CCTCA accomplishes this by serving as the primary entity within the county responsible for destination brand awareness and development, inspiring potential visitors, and for providing trip planning tools and information for travelers in Clackamas County and the region. Tourism works in partnership with members of the industry and with communities to develop and enhance local tourism assets and experiences. This department works to balance the interests of visitors, businesses, other organizations, and government through innovative leadership and strategic investment of resources and staff.

The CCTCA tourism program is funded by tax dollars generated from a county-wide transient room tax (“TRT”) of 6%. The amount of funding available for any given period varies with the lodging occupancy and room rate. These tax dollars are to be used for the development and promotion of tourism in Clackamas County. The Tourism Development Council (“TDC”) is a nine-member advisory group appointed by the Clackamas County Board of Commissioners to advise and oversee the program/budget of CCTCA. The Cultural Affairs program includes alignment with the Clackamas County Arts Alliance.

It is also important to note that CCTCA is a participant in state tourism programs through Travel Oregon and their Regional Cooperative Tourism Program (“RCTP”). CCTCA has been placed in three of the seven regions – Willamette Valley, Greater Portland, and Mt. Hood/Gorge. We are partners in each region in marketing and development plans that are funded by a portion of the state lodging tax of 1.8%.

Marketing Background

An effective destination marketing program demonstrates the ability to increase the awareness of the County's visitor experiences through implementation of targeted and partner-based advertising, sales, and visitor service strategies resulting in increased visitor spending and increased occupancy/revenue per available room (“REVPAR”) in commercial lodging facilities. The main objective in marketing is to deliver the OHMT brand message to reach our audience of local, regional, national, and international markets. Historically our target audience is 24-65 years of age; predominately leisure visitors; and some business and special group travel. Our primary pillars of work include outdoor recreation, agritourism, and heritage/culture.

Historically, CCTCA's marketing campaigns have included a mix of print advertising (leisure media, co-op partner program); out of home (bus kings, billboards); cinema; digital (banners, video, SEM); social media; and limited broadcast. Responding to the changing behaviors of consumers throughout the entire trip planning process, advertising focuses are changing to respond to these trends, with priority directed to digital to be consistent with consumer utilization of online resources for travel planning and to maximize

marketing return on investment. CCTCA's advertising call to action includes www.MtHoodTerritory.com (and #OMHT when appropriate) for consumer access, engagement, and inquiries, which are fulfilled with the annual *Travel Planner* (print and online view).

Additional marketing services not covered under the contract with a marketing agency of record include public relations, social media, SEO/SEM, and website management. CCTCA employs staff to manage and deliver our public relations efforts in house, with deskside coordination assistance through a separate contract with a public relations firm. Social media strategies and community management are conducted and monitored through in-house staff. CCTCA will solicit an RFP to administer a separate contract to deliver an integrated and aligned SEO/SEM marketing strategy and campaign. The marketing agency of record will work closely with all staff and assist in integrating the marketing strategies of these aforementioned programs.

We employ a fulltime staff person within the County Technology Services department and all website management is overseen through that staff person. CCTCA maintains a separate contract of service with a website development/hosting firm. The marketing agency of record will provide input on the marketing strategy and artistic design that will enhance our website presence in the ever changing online marketing world.

CCTCA is seeking an agency of record that values partnership and listening, and can interpret and actualize our vision into compelling and emotive calls to action that will inspire consumers to want to visit, experience, stay, and return to OMHT. We seek and expect:

- **Synergy:** a strategic working relationship built on respect and mutual understanding
- **Creativity:** our message needs to stand out in a competitive marketplace but it must do so authentically, and in a way that resonates equally with consumers and our tourism partners
- **Knowledge:** demonstrated knowledge of marketing concepts and trends in support of research-based, innovative experiential tourism marketing
- **Expertise:** high level of technical insight in the identification and utilization of marketing and advertising strategy and tactics
- **Proactivity:** initiative, attention to detail, and timely follow through based on realistic and agreed deadlines
- **Professionalism:** commitment to collaboration, communication, and project management that allows CCTCA to delegate with confidence
- **Accountability:** results-based execution against agreed goals and measurement targets

Our assessment of agencies with respect to these attributes and capabilities will be an important consideration in the awarding of this contract.

3.3. SCOPE OF WORK

3.3.1. Scope:

Clackamas County is requesting proposals from qualified and interested multi-disciplinary agencies for professional services related to developing and implementing integrated marketing and advertising plans for the Tourism & Cultural Affairs Department, based on the current [2012-17 Master Plan, FY 2016-17 Business Plan](#), as well as planning work documented in the previous Marketing Strategic Plan. These documents are found online at www.mthoodterritory.com/partners/ in the Document Center of the Partners' Resource section. In addition, CCTCA is currently undertaking a process to develop its next five-year Strategic Plan which will be available in June 2017 along with the FY2017-18 Business Plan.

The selected agency of record shall provide CCTCA with professional marketing services that will be outlined in a contract for services including an approved annual program of work and budget for each year of the contract based on the soon to be updated 2017-2022 Strategic Plan.

RETAINER SERVICES: CREATIVE CONCEPTION SERVICES. Marketing agency of record shall provide account services, concept advertising, conduct market research/trends pertinent to creative development, creative direction, art direction, copywriting, media evaluation/recommendations, and campaign measurements and reporting for CCTCA. It is expected that the selected agency of record will provide RETAINER SERVICES that include but are not limited to:

- Lead brand/messaging development for CCTCA (Oregon's Mt. Hood Territory) for both corporate and consumer delivery
- Evaluate and determine the need and timing for a brand refresh or overall redesign;
- Develop integrated marketing strategic plans and recommend the appropriate spend, media, and strategies to be most effective in achieving CCTCA's objectives and within budget parameters;
- Provide brand style guides and messaging, to be integrated and used by CCTCA's in-house staff;
- Evaluate media opportunities, recommend media plans, and negotiate media buys for the best advertising rates and placements for all forms of media (print, OOH, digital, cinema, broadcast);
- Establish metrics and tracking methodologies of all advertising and marketing programs, and provide regular reporting of status, performance measurements, and improvement efforts;
- Research and identify evolving technologies and trends in social media, evaluate social media digital paid opportunities, and recommend specific social media digital plans (*CCTCA retains the option to have flexibility to extract this area of social media digital responsibility and establish a contract with a dedicated social media marketing company if the full-service marketing agency does not demonstrate a specialization or high level of expertise to deliver an effective social media digital program. If necessary, a separate RFP process would be initiated to solicit a dedicated social media digital agency*);
- Concept and recommend a cooperative advertising program with tourism partners;
- Review new requests for media and sponsorship opportunities and provide CCTCA with recommendations;
- Prepare and write headline and advertising copy;
- Creative concept and account services for producing the annual *Travel Planner*;
- Coordinate brand/messaging within website design as relevant to campaigns;
- Provide a repository of all images purchased and used on behalf of CCTCA within our account on Barberstock or a similar DAM;
- Negotiate the lowest possible rate consistent with hi-res quality and good craftsmanship on purchases of new photography, video, soundtrack, and other materials with appropriate licensing use or ownership rights;
- Concept design considerations for promotional campaigns and other marketing programs, including any sweepstakes components which meet the desired objectives to increase audience (social or newsletter);
- Coordinate with the PR and social media communications team for integrated strategies between paid placements, earned media, and publicity;
- Coordinate with the development program team for integrated strategies for implementing development projects and international sales;
- Assist with strategic long-term planning utilizing research and analysis from sources such as Dean Runyan Associates, Longwoods International, PhoCusWright, Smith Travel Research, and SMARI, and coordinate any needed market research projects with any future research firms.

NON-RETAINER SERVICES: CREATIVE PRODUCTION AND MEDIA SERVICES. In addition to the services outlined above, CCTCA will request additional advertising and marketing services for collateral, trade show items, photo file, and unplanned items. Marketing agency shall provide services outside of the retainer for creative production, media services, hard costs, and miscellaneous projects for CCTCA. Media buying will include net media costs plus a media buying rate. It is expected that the selected agency of record will provide NON-RETAINER SERVICES that include, but are not limited to:

- Execute the process of establishing a brand refresh or overall redesign;

- Approved media buying and trafficking of approved advertising plans;
- Design and produce approved advertising, including a cooperative advertising program with tourism partners;
- Develop and execute promotional campaigns and other marketing programs, including any sweepstakes components;
- Creative production services, printing, and shipping of the annual *Travel Planner*;
- Concept, create, and produce all other print collateral outside of the annual *Travel Planner*;
- Purchase costs of new photography, video, soundtrack, and materials with appropriate licensing use or ownership rights (exempt from any markup fees);
- Develop and execute the approved concept for promotional campaigns and other marketing programs.

PROVISIONS. The selected agency of record is considered a partner with the staff and coordination between the agency and the staff is through the Marketing & Programs Manager at CCTCA. The selected agency will also interface with the Development, PR, and Social Media Communications Coordinators. Designated agency staff will need to attend monthly TDC meetings, monthly CCTCA marketing committee meetings, as well as monthly integrated staff meetings/calls. Agency will conduct weekly status meetings and provide regular update reports with the marketing manager. The selected agency of record will be a partner in facilitating a comprehensive and coordinated destination marketing plan throughout the County.

Marketing agency approvals are dependent upon the stage of the project. Initial approval of most new projects would be presented to the marketing committee and most likely the TDC, but then the implementation stage approvals are by the marketing manager and/or the executive director.

In addition, the selected marketing agency will collaborate with a separate SEO/SEM vendor as appointed through a separate contract, to provide any recommendations to maintain brand style and integrity as established through the creative style guide and messaging.

In the event CCTCA issues a separate contract with a dedicated social media digital agency to deliver a social media digital program, the marketing agency of record will collaborate with the dedicated social media digital vendor to provide any recommendations to ensure integrated marketing campaigns, and maintain brand style and integrity as established through the creative style guide and messaging.

The selected agency will be requested to provide recommendations and/or services for leveraging CCTCA's marketing dollars through cooperative promotions and marketing projects which may involve both private and public sector organizations. CCTCA's cooperative advertising program is successful for our partners in providing a cost effective means for them to advertise in publications and online placements that they cannot otherwise afford. Given the realities of new technology and online mediums, the co-op programs are changing and fewer partners are participating. CCTCA is looking at how to restructure the program to better meet the needs of partners and provide effective and cost efficient marketing strategies within these partnerships.

CCTCA prides itself on the quality of the professional marketing program it implements, the attention to detail given to all strategies, the leadership provided to tourism partners in the destination, and the return on investment achieved by the marketing program. All programs must continue to these standards and ultimately are measured by the amount of visitor spending in the County, the lodging occupancy/average room rate, and the results identified in each annual [Business Plan](#).

BUDGET AND CONSIDERATION TERMS

CCTCA's annual budget fluctuates on a year by year basis dependent upon lodging taxes collected. In general, the annual marketing agency budget can be anticipated between \$750,000.00 to \$1,250,000.00 per year. Each year the awarded firm is expected to provide a detailed marketing budget to CCTCA outlining the anticipated annual costs of services prior to work commencing for that fiscal year. The purpose of providing the annual budget is to identify the scale of advertising conducted by CCTCA on an annual basis and is in no way intended to project what the proposed retainer fee should be.

Services for media planning and placement shall be compensated through the standard media commissions received from advertising placements. Other approved work will be compensated within an agreed monthly retainer and/or on an agreed hourly basis. Any authorized travel reimbursement will only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy. All projects and media authorizations will be approved through a written estimate to be signed by CCTCA staff before the project commences and media is purchased. Fees may not be duplicative (example: charge an hourly rate for media planning and placement plus a media commission fee).

Funding for the initial contract and subsequent years of the contract will be dependent on TRT receipts and the approved annual Budget/Business Plan. CCTCA will have the ability to consider any identified change in retainer services and associated fees for this service during the annual renewal process, as influenced by unperceived market changes.

3.3.2. The term of Contract:

The term of the contract shall be from the effective date through **June 30, 2018** with the option for four (4) additional one (1) year extensions thereafter subject to the mutual agreement of the parties.

**SECTION 4
EVALUATION PROCEDURE**

4.1 An evaluation committee will review all Proposals that are initially deemed responsive and they shall rank the Proposals in accordance with the below criteria. The evaluation committee may recommend an award based solely on the written responses or may request Proposal interviews/presentations. Interviews/presentations, if deemed beneficial by the evaluation committee, will consist of the highest scoring Proposers. The invited Proposers will be notified of the time, place, and format of the interview/presentation. Based on the interview/presentation, the evaluation committee may revise their scoring.

Written Proposals must be complete and no additions, deletions, or substitutions will be permitted during the interview/presentation (if any). The evaluation committee will recommend award of a contract to the final County decision maker based on the highest scoring Proposal. The County decision maker reserves the right to accept the recommendation, award to a different Proposer, or reject all Proposals and cancel the RFP.

Proposers are not permitted to directly communicate with any member of the evaluation committee during the evaluation process. All communication will be facilitated through the Procurement representative.

4.2 Evaluation Criteria – Written Response

| <u>Category</u> | <u>Points available:</u> |
|---|--------------------------|
| Project Understanding and Management Strategy | 0-25 |
| Creative & Design Approach | 0-25 |
| Qualifications Experience & References | 0-25 |
| Overall Quality and Creativity of Proposal | 0-10 |
| Fees | 0-15 |
| Available points | 0-100 |

4.3 Evaluation Criteria – Oral Presentation

| <u>Category</u> | <u>Points available:</u> |
|---|--------------------------|
| Level of understanding of the County tourism | 0-20 |
| Relevance of creative brief | 0-25 |
| Creativity and Graphic Design Appeal | 0-25 |
| Flexibility of Marketing Program | 0-20 |
| Strategic Plan outline and associated budget allocation | 0-10 |
| Available points | 0-100 |

4.4 Once a selection has been made, the County will enter into contract negotiations. During negotiation, the County may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the County is unable to come to terms with the highest scoring Proposer, discussions shall be terminated and negotiations will begin with the next highest scoring Proposer. If the resulting contract contemplates multiple phases and the County deems it is in its interest to not authorize any particular phase, it reserves the right to return to this solicitation and commence negotiations with the next highest ranked Proposer to complete the remaining phases.

SECTION 5
PROPOSAL CONTENTS

5.1. Vendors must observe submission instructions and be advised as follows:

5.1.1. Complete Proposals may be mailed to the below address or emailed to Procurement@clackamas.us. The subject line of the email must identify the RFP title. Proposers are encouraged to contact Procurement to confirm receipt of the Proposal. If the Proposal is mailed, an original copy and an electronic copy (on compact disk or jump drive) must be included. The Proposal (hardcopy or email) must be received by the Closing Date and time indicated in Section 1 of the RFP.

5.1.2. Mailing address including Hand Delivery, UPS and FEDEX:

Clackamas County Procurement Division
Clackamas County Public Services Building
2051 Kaen Road
Oregon City, OR 97045

5.1.3. County reserves the right to solicit additional information or Proposal clarification from the vendors, or any one vendor, should the County deem such information necessary.

Provide the following information in the order in which it appears below:

5.2 Written Response

5.2.1 Project understanding and Management Strategy

- Describe your company's values and approach to client relationships and account management, including enough detail so CCTCA can determine that the agency has a thorough understanding of the services required by this project.
- Illustrate the firm's strategic and integrated planning process, in addition to proposing how the firm will approach this work with CCTCA.
- Indicate what you would characterize as key competitive challenges, opportunities, and trends that CCTCA should be mindful of relative to today's changing technologies and marketing environment.

5.2.2 Creative Design and Approach

- Include information on the agency's creative process, corporate culture, and what sets your creative capabilities apart from other agencies.
- Provide information on the steps that would be taken to create the marketing/advertising strategies for Oregon's Mt. Hood Territory.
- Provide samples of work or case studies created for projects similar in size and scope that demonstrate the agency's creativity working across multiple channels (preference will be given to work presented that is of current agency employees who will be assigned to CCTCA's account).

5.2.3 Agency Qualifications, Experiences & References

- All team members (including subcontractors) included on the team shall be identified. Demonstrated levels of experience and available staff must be clearly stated.
- Provide background information describing your business, including a comprehensive overview of your capabilities to provide the requested service, your ability to develop a tourism destination marketing organization's advertising campaign, and initial ideas that demonstrate how your agency's experience can benefit Oregon's Mt. Hood Territory.
- Provide specific information describing your experience and ability to execute an effective social media digital marketing program (*CCTCA retains the option to have flexibility to extract this area of social media digital responsibility and establish a contract with a dedicated social media marketing company if the full-service marketing agency does not demonstrate a specialization or high level of expertise to deliver an effective social media digital program. If necessary, a separate RFP process would be initiated to solicit a dedicated social media digital agency*)
- Provide overview of how your agency measures impact of brand marketing activities and ROI.
- Provide a summary of marketing/advertising services of this nature provided to any current clients in Clackamas, Multnomah, Washington and Lane counties, as well as tourism clients from outside these counties. Provide a summary of experience with governmental accounts or non-profit agencies of similar size and scope as described in this solicitation.
- Provide a minimum of three references including contact names, dates that the services were provided, addresses and telephone numbers. At least two of the references must be current clients. References may be checked to verify the agency's ability to perform similar tasks.
- Indicate your knowledge of tourism in Clackamas County.

5.2.4 Overall creativity and quality of the proposal

5.2.5 Pricing/Fees

The pricing/fee component must include the total annual cost for the contract with break outs showing a schedule of prices for specific services: including the monthly retainer rate for services with a precise definition of expenses covered by the retainer, staff hourly charges, and media buying and trafficking commission. Specifically itemize:

- Monthly Retainer Services Fee
- Hourly and material rates for Non-Retainer Services
- Media buying commission rates

5.3 Oral Presentation

Will consist of an agency presentation of a creative brief outlining a comprehensive marketing - advertising campaign including an overview of proposed implementation strategies and initial creative designs. Detailed information, *including the most current draft 2017-18 Business Plan and the draft 2017-2022 Strategic Plan, will be provided to each agency to assist in preparation of their presentation.* The presentation should include an overview of the percent of budget to be allocated to each strategy presented. Agency staff (and subcontractors that are part of the proposal) that would have major roles in the program should be part of the presentation. The presentation will be no more than one hour with an additional one hour allowed for questions and answers. A briefing with the CCTCA Executive Director and Marketing Manager will be made available to all finalists prior to the beginning of the preparation

period. It will be a group briefing. All other questions and contact with CCTCA must be done in writing (via e-mail is satisfactory) and all questions/answers will be shared with all finalists.

5.3.1 Information to be evaluated in oral presentation:

- Level of understanding of Clackamas County tourism evident in presentation
- Relevance of creative brief including implementation strategy to draft FY17-18 Business Plan and draft 2017-2022 Strategic Plan
- Creativity of presentation and appeal of graphic design
- Flexible marketing program to meet changing trends, mediums and evolving technologies
- Recommendation of a strategic marketing plan outlined and associated budget allocation for specific program areas

FINAL SELECTION WILL BE MADE BASED UPON THE COLLECTIVE POINTS AWARDED DURING THE WRITTEN AND ORAL PRESENTATIONS.

(CCTCA retains the option to have flexibility to extract the area of social media digital responsibility and establish a contract with a dedicated social media marketing company if the full-service marketing agency does not demonstrate a specialization or high level of expertise to deliver an effective social media digital program. If necessary, a separate RFP process would be initiated to solicit a dedicated social media digital agency)

5.6. Completed Proposal Response (see the below form)

PROPOSAL RESPONSE
Marketing Agency of Record

Submitted by:

(Must be entity's full legal name, and State of Formation)

The undersigned, through the formal submittal of this Proposal response, declares that he/she has examined all related documents and read the instruction and conditions, and hereby proposes to provide the services as specified in accordance with the RFP, for the price set forth in the Proposal documents.

Contractor, by signature below, hereby represents as follows:

- (a)** That no County elected official, officer, agency or employee of the County is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the County, its elected officials, officers, agents, or employees had induced it to enter into this contract and the papers made a part hereof by its terms;
- (b)** The Proposer and each person signing on behalf of any Proposer certifies, in the case of a joint Proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
 - 1. The prices in the Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other proposer or with any competitor;
 - 2. Unless otherwise required by law, the prices which have been quoted in the Proposal have not been knowingly disclosed by the Proposer prior to the Proposal deadline, either directly or indirectly, to any other proposer or competitor;
 - 3. No attempt has been made nor will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restraining trade;
- (c)** The proposer fully understands and submits its Proposal with the specific knowledge that:
 - 1. The selected Proposal must be approved by the Board of Commissioners.
 - 2. This offer to provide services will remain in effect at the prices proposed for a period of not less than ninety (90) calendar days from the date that Proposals are due, and that this offer may not be withdrawn or modified during that time.
- (d)** That this Proposal is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (e)** That the Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (f)** That the Proposer accepts all terms and conditions contained in this RFP and that the RFP and the Proposal, and any modifications, will be made part of the contract documents. It is understood that all Proposals will become part of the public file on this matter. The County reserves the right to reject any or all Proposals.
- (g)** That the Proposer holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.
- (h)** That the Proposer is covered by liability insurance and other insurance in the amount(s) required by the solicitation and in addition that the Proposer qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
- (i)** That the Proposer is legally qualified to contract with the County.
- (j)** That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emergency small business that is certified under ORS 200.055.

(k) The proposer agrees to accept as full payment for the services specified herein, the amount as shown in the Proposal.

Resident Bidder, as defined in ORS 279A.120

Non-Resident Proposer, Resident State

Oregon Business Registry Number

Contractor's Authorized Representative

Signature: _____ Date:

Name: Title:

Firm:

Address:

City/State/Zip: Phone:

E-mail: Fax:

Contract Manager:

Name: Title:

Phone number:

Email Address:

**SECTION 6
SAMPLE CONTRACT FORM**



**CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

This Personal/Professional Services Contract (this "Contract") is entered into between XXXX ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on . However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: ("Work"), further described in **Exhibit A**.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed \$, for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Travel and Other Expense. Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibits A, B, and C.

6. Contractor Data.

Address:

Contractor Contract Administrator:

Phone No.:

Email:

MWESB Certification: DBE # MBE # WBE # ESB #

Payment information will be reported to the Internal Revenue Service ("IRS") under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous

chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- 8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
- 9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

- 10. INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
- 11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 12. NOTICES.** 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 by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5)

days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. 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 or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the 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.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. 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 the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 19. TAX COMPLIANCE CERTIFICATION.** 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. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor’s warranty in 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 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 County’s setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific

performance, declaratory or injunctive relief. 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 performance. These 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.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) 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 (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

- 20. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) 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, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.
- 21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) 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. 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 the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give,

or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, 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.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
- (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- (D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
- 28. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or

positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.

29. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Company Name

Clackamas County

Authorized Signature

Date

XXXXXX

Date

Name / Title (Printed)

Approved as to Form:

Oregon Business Registry #

County Counsel

Date

Entity Type / State of Formation

EXHIBIT A
PERSONAL/PROFESSIONAL SERVICES CONTRACT

SCOPE OF WORK

The County Contract administrator for this Contract is:

CONSIDERATION

- a. [Consideration Rates – Fixed Fee, T&M (list hourly rates and explain authorized expenses)]
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **[\$[AMOUNT]]**. Invoices shall be submitted to:
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

EXHIBIT B
INSURANCE

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.

Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

2. Required by County Not required by County

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

3. Required by County Not required by County

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

4. Required by County Not required by County

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

5. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, the Contractor shall furnish an endorsement from the insurance company naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to County acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

6. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or purchasing@clackamas.us.

EXHIBIT C

CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

- 1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
- 2. Are licensed if licensure is required for the services; **AND**
- 3. Are responsible for other licenses or certificates necessary to provide the services **AND**
- 4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- _____ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- _____ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- _____ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- _____ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- _____ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

- 1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
- 2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature _____ Date _____