

KLAMATH COUNTY, OREGON

**REQUEST FOR PROPOSALS FOR:
A MASTER DEVELOPER FOR THE DEVELOPMENT OF COUNTY PROPERTY ON
THE FOOTHILLS SITE - KLAMATH FALLS, OREGON**



**MULTI-USE DEVELOPMENT
SOLICITATION RFP**

Issue Date: June 12, 2018

Issuing Office:
Leslie Barlow-Hunter
Klamath County Board of Commissioners
305 Main Street
Klamath Falls, OR 97601

Closing Date: 2:00 P.M., September 14, 2018

FAXED OR ELECTRONIC PROPOSALS WILL NOT BE ACCEPTED

Appendixes Prepared By:

KCEDA
Klamath County Economic Development Association

Klamath County Economic Development Association (KCEDA)
205 Riverside Drive
Klamath Falls, OR 97601

KLAMATH COUNTY, OREGON
REQUEST FOR PROPOSAL
Public Notice

The Klamath County Board of Commissioners and the Klamath County Tax/Property Management Office are initiating this Request for Proposal (RFP) as they seek qualified developers to prepare a comprehensive master plan and develop property currently owned by the County that rests on the Foothills site located at map number R-3809-03500-00400-000 tax account # R446388 TWP 38 RNGE 9, BLOCK SEC 35, TRACT PARCEL 1&3 OF LP# 60-97. The County envisions this property as a mixed-use community that serves to be a family friendly multi-venue destination which infills redevelopment, attracting residents and visitors in the aim to elicit economic growth, as well as enhance the quality of life for Klamath County residents.

The RFP document may be obtained from the undersigned at 305 Main Street, Klamath Falls, Oregon 97601 or by calling (541) 851-3693 Monday through Friday 8:00 a.m. - 2:00 p.m. The RFP is also available on the web at <http://klamathcounty.org/depts/contracts/openbids.asp>. Any party downloading the RFP packet from the web will be responsible to check with the Contracting and Risk Manager, by phone 541-851-3693, or email at lbarlow-hunter@co.klamath.or.us, or online at the above referenced link, for any addenda issued for this project.

Questions pertaining to the specifications or scope of work should be directed to Rick Vaughn phone: (541) 883-4297.
There will be no pre-proposal meeting for this project.

Sealed Proposals marked “**Master Developer – Foothills RFP**” shall be received by the Contract and Risk Manager no later than 2 p.m., September 14, 2018 at the address listed on the front page of the RFP. Proposals may be delivered via U.S. Mail or courier or hand-delivered. Proposals shall be sent to the attention of Leslie Barlow-Hunter, Contract and Risk Manager. Late, faxed or electronically transmitted Proposals shall not be accepted.

Klamath County may reject any proposal not in compliance with all prescribed public bidding procedures and requirements, and may for good cause reject any or all proposals upon a finding of the agency it is in the public interest to do so.

Leslie Barlow-Hunter
Contract and Risk Manager

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These reports were prepared by the Klamath County Economic Development Association (KCEDA). For other information/data about the present or future position of the economy, please refer to the contacts listed from their offices in the ‘Contacts Regarding Questions’ section of this RFP.

- Appendix A – Map of Foothills Property (highlighted in blue)
Appendix B – Demographic Reports
Appendix C – Housing Data
Appendix D – Surrounding Businesses Composition
Appendix E – Consumer Expenditures

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1. INTRODUCTION

1.1. OVERVIEW, OBJECTIVES, AND BACKGROUND

1.1.1. Overview. The Klamath County Board of Commissioners and the Klamath County Tax/Property Management Office are initiating this Request for Proposal (RFP) as they seek qualified developers to prepare a comprehensive master plan and develop property currently owned by the County that rests on the Foothills site located at map number R-3809-03500-00400-000 tax account # R446388 TWP 38 RNGE 9, BLOCK SEC 35, TRACT PARCEL 1&3 OF LP# 60-97. The County envisions this property as a mixed-use community that serves to be a family friendly multi-venue destination which infills redevelopment, attracting residents and visitors in the aim to elicit economic growth, as well as enhance the quality of life for Klamath County residents

Background. This picturesque, scenic property is centrally located on the primary transportation route between the two major population centers (City of Klamath Falls residents and County residents neighbor each side of the location) in the area, less than a mile east of the intersection between Crater Lake Parkway, which directly feeds into Highway 97; the property is also in close proximity to multiple access points for Highway 140. Across the street from the property is Steen Sports Park, a 150 acre complex that features four baseball diamonds, four outdoor soccer fields, several picnic areas, two playgrounds, a cross country jogging path, a 60,000 sq. ft. indoor multi-purpose facility, as well a state-of-the-art skate park; future plans for the development have also indicated the addition of a gymnasium, daycare center, and possibly an industrial pool. The Steen Sports Park is consistently a congregation center for community events that draws hundred (and frequently thousands) of people to the area on a regular basis. Beyond the property itself, developers interested in this property should also be made aware that common costs related to living or operating a business are highly competitive in Klamath County as opposed to other areas across the region.

- Annual operating costs are much lower in Klamath Falls compared to Bend and Portland by 8%-32%.
- Property taxes (personal and real estate) are 41%-43% lower in Klamath Falls when compared to Bend and Portland.
- Typical Cost of Living (including housing) expenses are lower in Klamath Falls measured against other Oregon cities.

Although the property is owned by the County, it is within city limits. County representatives on this endeavor have met with staff from the City of Klamath Falls to collaborate on goals for the future development, where both simultaneously have positioned their municipalities to be in consistent coordination to needs that may arise during the development process.

This is a multiphase RFP and is intended to establish a short list of qualified developers with the proven financial capacity, project management skills and relevant development experience to expeditiously develop the property the County presently owns on the Foothills site. Once the short list is established, the County will interview the top-qualified developers and seek additional information regarding their proposed development approach and business terms. Based on an evaluation of the developer submittals, a developer will then be chosen to enter in an Agreement to prepare a master plan and develop the site; later sections go into brief but further detail as to the evaluation and selection process. Ultimately, the County intends to award all 40 acres of this property to the developer, where "clawbacks" would be determined during the negotiation and agreement process that would require the developer to be in compliance with an agreed upon construction timeline, that if not met, would forfeit the awarded property back into County ownership; however, other ownership or financial participation structures will be open to consideration as long as they achieve holistic development of the property in accordance with the County's development vision. More specific details as to the criteria of this RFP used in evaluating proposers are provided in the following sections.

As to the development vision related to this site, the County looks to have the property be a mixed-use community that contains multiple dimensions (a scale of possibilities that could include things like retail, restaurants, arts, entertainment, lodging, etc.), ultimately set to achieve a long lasting positive contribution to the County as a whole. This vision includes:

- Develop a "village center" that will serve as a central congregation point for the community, with neighborhood retail, cultural and art uses, expanding the options of interaction for residents.
- Improve public access and enhance open space, trail and recreational use; increase internal and external traffic volume via all methods of transportation.
- Develop a beautiful, walkable and sustainable mixed-use community location that is compatible with the surrounding neighborhood(s).
- Honor Klamath County's history and historical significance.
- Gradual, expeditious improvement that serves further development of surrounding local entities.

1.1.2. To reiterate, once a developer is selected, both the County and City, in addition to local resource providers (such as KCEDA), will work with the developer to outline a process and timeline for the ultimate transition of ownership on the property, and construction phasing. The County, along with the City of Klamath Falls, understand that partnerships between the public and private sector are best accomplished when development objectives are clear and aligned. A desire for collaborative partners will be at the core of this RFP evaluation, and we seek to be of whatever service we can within the parameters (listed in the next sections) of the proposal requirements and submission instructions.

1.1.3. The Klamath County Board of Commissioners together with the Klamath County Tax/Property Management Office is issuing this Request for Proposal (“RFP”). Proposals must be submitted to Leslie Barlow-Hunter, Contracting and Risk Manager, 305 Main Street Suite 216, Klamath Falls, OR 97601, no later than 2:00 p.m., September 14, 2018.

1.1.4. The objective of the RFP is to identify a qualified professional that can offer the highest quality services in as efficient and timely manner possible at the best value to Klamath County.

1.1.5. In order to ensure consideration, proper identification and handling, the Proposal must be clearly marked:

Master Developer – Foothills RFP

1.1.6. Klamath County will not be responsible for identifying and handling any proposal that is not submitted this way. Failure to so label may result in disqualification of your proposal.

1.2. PURPOSE

1.2.1. The Klamath County Board of County Commissioners and the Klamath County Tax/Property Management Office invites written sealed proposals to enter a selection process to enter into contract with the County for the development of County property located at the Foothills site Project detailed in these Sections.

1.2.2. All qualified proposers are invited to respond to this RFP by submitting a Proposal consistent with the terms, conditions, and specifications stated herein.

1.3. SCHEDULE

<u>Event</u>	<u>Due Date</u>
Date of Issuance	June 12, 2018
Written Questions	August 17, 2018 @ 2pm
RFP Closing	September 14, 2017 @ 2pm
Proposal Opening	September 17, 2018
Review and scoring (approx.)	September 21, 2018
Schedule Interviews (approx.)	September 28, 2018
Issuance of Notice of Intent to Award (approx.)	October 16, 2018
Award Protests (approx.)	October 26, 2018 @ 5pm
Contract Award (approx.)	November 13, 2018

1.4. DEFINITIONS

1.4.1. For general definitions, see OAR 125-246-0110, which are incorporated by reference herein.

1.4.1.1. “County” means Klamath County.

1.4.1.2. “RFP” means this Request for Proposals.

1.4.1.3. “Scope of Work” means the general character of the Supplies and Services, the work’s purpose and objectives, and County’s expectations. Examples of expectations include, if applicable, a description of the purchase, specifications, tasks (obligations), deliverables, delivery or performance schedule, and acceptance requirements. The Scope of Work helps the prospective Proposers develop the Proposals.

1.4.1.4. “Statement of Work” means the specific provision in the final Contract that sets forth and defines in detail the agreed-upon objectives, expectations, performance standards, and other obligations.

1.5. SCOPE OF WORK /STATEMENT OF WORK

1.5.1. Issuing Office. This Request for Proposal (“RFP”) is being issued by the Klamath County Tax/Property Management Office.

1.5.2. Objective. The Klamath County Board of Commissioners and the Klamath County Tax/Property Management Office are initiating this Request for Proposal (RFP) as they seek qualified developers to prepare a comprehensive master plan and develop property currently owned by the County that rests on the Foothills site. The County envisions this property as a mixed-use community that serves to be a family friendly multi-venue destination which infills redevelopment, attracting residents and visitors in the aim to elicit economic growth, as well enhance the quality of life for Klamath County residents; the County’s vision for this property will be expanded upon in further detail later in this section.

1.5.3. Services.

Below are the areas of which Klamath County would like to have addressed within the submitted proposals. The Klamath County Commissioners will evaluate the information supplied in proposal responses during an evaluation period taking place following the submission deadline and before setting interview dates with finalist developer candidates.

Project Vision

- Provide a general narrative of your project vision, including how the County’s development vision principles will be represented. The County understands this is only preliminary and subject to further market considerations.
- Provide a schematic planning program including the proposed process, timeline, scope and intent relative to the detailed planning required to precede construction.
- Provide details on the factors determining the project phasing approach including geographic factors, infrastructure strategies, investor commitments and site preferences.

Project Plan

- Provide a schematic plan for the first phase of development (schematic level detail includes general land use arrangement, conceptual building footprints, circulation design considerations, building density/height notes and keyed-reference development styles).
- Provide corresponding development character images or renderings keyed to components of the first phase of development indicative of team core competency, architectural approach, and project context and project vision.
- Provide a narrative and/or illustration indicating real estate investment strategy, noting impact of open space, parking, communications infrastructure, green infrastructure and other supportive site amenities and features.

Project Impact

- Provide a narrative of the project transportation strategy, including transit-oriented development, critical modal linkages, transportation demand management strategies, multi-modal features and parking strategy/intent.
- Provide a narrative relative to addressing project short and long term market resiliency, inclusive housing strategy, how the project will address current market demand and the attraction and retention of the workforce.
- Provide a narrative on the social impacts of the proposed development, including community building, project inclusiveness, the attraction of people and population and demographic impact.

Financial Strategy

- Provide a list of intended financial resources for the project and their intended development investment application and strategies. Provide a narrative explaining how the injection of public incentives (capital and other) may add value to the project (if applicable to your strategy).

Project Management and Development Team Information

- Provide a narrative describing the short and long-term project operations and management strategy. Include an outline of essential functions of the project management role, the expected role of the County and other local resources; please also include any examples of prior projects the team has successfully managed.
- Provide a list of principals and staff assigned and committed to this project. Include any conflicting assignments/projects during the projected project timeline.
- Provide testimonials or reference letters from past clients and/or project partners.

1.5.4. Assignability. The successful respondent shall not assign, transfer, subcontract, or otherwise dispose of its rights or

duties under this Agreement to any other person, firm, partnership, company, or corporation without the previous written consent of Klamath County.

1.5.5. Payment. Payment for services rendered will be based upon pricing schedule agreed upon in contract negotiation.

County and the successful Proposer may negotiate a Statement of Work for the Contract. The parties may agree to amend or modify the awarded Contract in accordance with OAR 137-047-0800.

2. PROPOSAL REQUIREMENTS

2.1. PRE-PROPOSAL MEETING

2.1.1. There will be no pre-proposal meeting for this project.

2.2. SUBMISSION OF PROPOSALS

2.2.1. Proposals shall be sent to the attention of and be received by Leslie Barlow-Hunter, the Contract and Risk Manager, no later than the closing date and time listed on the front page of this RFP, and labeled “**Master Developer – Foothills RFP**”. Proposals may be delivered via U.S. Mail, express courier or hand-delivered. Late, electronically transmitted or faxed Proposals shall not be accepted.

2.3. MINIMUM PROPOSAL REQUIREMENTS

2.3.1. A Proposal shall meet the minimum proposal requirements described in the Proposal Cover Sheet, Attachment A.

2.4. TECHNICAL PROPOSAL REQUIREMENTS

2.4.1. The Proposal shall describe how the Proposer shall meet each of the technical requirements described in the Scope of Work in Section 1.5, including identification of key persons who shall perform the work. This Proposal shall be evaluated as described in Section 4.

2.4.2. Responsive and Responsible Determinations

2.4.2.1. Responsive. To be considered responsive, the Offer shall substantially comply with all requirements of the RFP and all prescribed public solicitation procedures. In making such evaluation, County may waive minor informalities and irregularities. Prior to award of a Contract, County intends to evaluate whether the apparent successful Proposer meets the applicable standards of responsibility identified in OAR 125-247-0500. In doing so, County may investigate Proposer and request information in addition to that already required in the RFP, when County, in its sole discretion, considers it necessary or advisable.

2.4.2.2. Responsible. County reserves the right, pursuant to OAR 125-247-0500, to investigate and evaluate, at any time prior to award and execution of the Contract, the apparent successful Proposer’s responsibility to perform the Contract. Submission of a signed Proposal shall constitute approval for County to obtain any information County deems necessary to conduct the evaluation. County shall notify the apparent successful Proposer in writing of any other documentation required, which may include but is not limited to: recent profit-and-loss history; current balance sheets; assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims; availability of short and long-term financing; bonding capacity; credit information; material; equipment; facility and personnel information; performance record of Contract performance; etc. Failure to promptly provide this information shall result in proposal rejection.

2.4.3. County may postpone the award of the Contract after announcement of the apparent successful Proposer in order to complete its investigation and evaluation. Failure of the apparent successful Proposer to demonstrate Responsibility, as required under OAR 125-247-0500, shall render the Proposer non-responsible and constitute grounds for offer rejection, as required under ORS 279B.100.

2.5. PROPOSAL FORM AND CONTENT

2.5.1. Proposal Cover Sheet. The Proposer shall sign and submit the Proposal Cover Sheet and Certifications (see Attachment A). Proposals shall address the proposal and submission requirements set forth in the RFP and shall describe how the Services shall be provided. Proposals that merely offer to provide Services as stated in the RFP shall be considered non-responsive and shall not be further considered.

2.5.2. All Proposals shall follow the format described in this Section. Proposal sections and pages shall be appropriately numbered per the outline below.

2.5.3. It is the intent of the County to solicit proposals that are complete yet concise, descriptive yet brief. To enable the evaluation committee to fairly evaluate each proposal, proposers shall utilize the following proposal format:

2.5.4. Bidders shall provide the following information in the following order:

Project Vision

- Provide a general narrative of your project vision, including how the County’s development vision principles will be represented. The County understands this is only preliminary and subject to further market considerations.
- Provide a schematic planning program including the proposed process, timeline, scope and intent relative to the detailed planning required to precede construction.
- Provide details on the factors determining the project phasing approach including geographic factors, infrastructure strategies, investor commitments and site preferences.

Project Plan

- Provide a schematic plan for the first phase of development (schematic level detail includes general land use arrangement, conceptual building footprints, circulation design considerations, building density/height notes and keyed-reference development styles.
- Provide corresponding development character images or renderings keyed to components of the first phase of development indicative of team core competency, architectural approach, and project context and project vision.
- Provide a narrative and/or illustration indicating real estate investment strategy, noting impact of open space, parking, communications infrastructure, green infrastructure and other supportive site amenities and features.

Project Impact

- Provide a narrative of the project transportation strategy, including transit-oriented development, critical modal linkages, transportation demand management strategies, multi-modal features and parking strategy/intent.
- Provide a narrative relative to addressing project short and long term market resiliency, inclusive housing strategy, how the project will address current market demand and the attraction and retention of the workforce.
- Provide a narrative on the social impacts of the proposed development, including community building, project inclusiveness, the attraction of people and population and demographic impact.

Financial Strategy

- Provide a list of intended financial resources for the project and their intended development investment application and strategies. Provide a narrative explaining how the injection of public incentives (capital and other) may add value to the project (if applicable to your strategy).

Project Management and Development Team Information

- Provide a narrative describing the short and long-term project operations and management strategy. Include an outline of essential functions of the project management role, the expected role of the County and other local resources; please also include any examples of prior projects the team has successfully managed.
- Provide a list of principals and staff assigned and committed to this project. Include any conflicting assignments/projects during the projected project timeline.
- Provide testimonials or reference letters from past clients and/or project partners.

Other Information:

- Proposers may submit any other information that is not described in this RFP that would be beneficial to Klamath County. If in the proposer’s opinion, Klamath County has overlooked anything material or relevant, such item(s) may be brought to Klamath County’s attention and be included in the RFP.

2.5.5. All proposals must contain a signed Proposal Certification Statement. (See Attachment A – Certifications)

2.5.6. Copies. Submissions in response to the RFP shall contain one (1) signed original and five (5) copies of the Proposal and all required supporting information, no later than the closing date and time listed on the front page of this RFP, and labeled **“Master Developer – Foothills RFP”**. Proposals may be delivered via U.S. Mail, express courier or hand-delivered. Proposals shall be sent to the attention of Leslie Barlow-Hunter, Contract and Risk Manager. Late, electronically transmitted or faxed Proposals shall not be accepted.

3. PROCUREMENT AUTHORITY AND METHOD

County is conducting the RFP pursuant to its authority under 279A.060 Local Contract Review Boards. County intends to use the Competitive Sealed Proposals method pursuant to [ORS 279B.060 and OAR 137-047-0260]. County intends to initially conduct a single-step Competitive Sealed Proposal method. See reservations of rights in Section 3.20.

3.1. COMPLIANCE WITH RULES

3.1.1. Proposers responding to this RFP must follow the procedures and requirements stated herein. Except as otherwise provided in this RFP, the applicable provisions of the Oregon Revised Statutes (ORS) Chapter 279B governing public contracting shall apply to all personal services contracts of the County. Adherence to these rules and the procedures and requirements of this RFP will ensure a fair and objective analysis of your proposal. Failure to comply with or complete any part of this RFP may result in rejection of your proposal.

3.2. WRITTEN QUESTIONS AND ADDENDA

3.2.1. Questions regarding the terms and conditions contained in the RFP must be submitted to the RFP Contact listed below no later than 2:00 PM PST, August 17, 2018 questions to the addresses below;

- For technical questions / clarifications:
Rick Vaughn
Klamath County Tax Collector/Property Manager
rvaughn@klamathcounty.org
541-883-4297
- For Questions regarding the RFP process:
Leslie Barlow-Hunter
Klamath County Contracting and Risk Manager
lbarlow-hunter@co.klamath.or.us
[541-851-3693](tel:541-851-3693)

3.2.2. All questions received by the parties listed above that require clarification or modifications to the terms and conditions of the RFP will be answered by addenda to this RFP. Addenda will be emailed to those on the Interested Parties List no later than August 24, 2018. Anonymity of the source of the specific questions will be maintained in the written response.

3.2.3. ADDENDA: If in the County's opinion, additional information or interpretation is necessary; such information will be supplied in the form of an addendum. Addenda shall have the same binding effect as though contained in the main body of the RFP. Any oral instructions or information concerning the specifications or other information given out by the County or Design Team to prospective firms shall not bind the County. The RFP Contact shall issue all addenda.

3.3. RESPONSE TO REQUESTS FOR CLARIFICATION OR CHANGE

3.3.1. County shall respond to each properly-submitted written request for clarification or request for change in accordance with ORS 279B.405. Where appropriate, County shall issue revisions and clarify RFP provisions via Addenda posted on County's website at <http://klamathcounty.org/depts/contracts/openbids.asp>. County may also informally respond to Proposer questions. **Informal responses, however, do not affect the provisions of the RFP. The RFP, contractual terms and specifications can only be changed via formal addenda issued by County.**

3.4. CANCELLATION, DELAY, OR SUSPENSION OF SOLICITATION; REJECTION OF PROPOSALS

3.4.1. This solicitation may be canceled, delayed or suspended, or any or all bids or proposals may be rejected in whole or in part, when the board determines cancellation or rejection, delay or suspension is in the best interest of the commission. The reasons for the cancellation or rejection or delay or suspension will be made part of the file. The county is not liable to any proposer for any loss or expense caused by or resulting from the delay or suspension, cancellation or rejection of a solicitation, proposal or award.

3.5. IRREGULARITIES

3.5.1. The County reserves the right to waive any non-material irregularities or information in the RFP or in any proposal.

3.6. PROTEST OF PROPOSAL SPECIFICATIONS

- 3.6.1. A proposer who believes the proposal scope of work or specifications are unnecessarily restrictive or limit competition may submit a protest, in writing, to the Contracting and Risk Manager who will submit Protest(s) of Proposal Specifications to the Board for action. The Board's ruling is final. To be considered, protests must be received by September 04, 2018, ten (10) calendar days before the proposal closing date. Envelopes containing protests should be marked as follows:

**PROPOSAL SPECIFICATION PROTEST
MASTER DEVELOPER – FOOTHILLS RFP**

3.7. PROPOSAL WITHDRAWAL

- 3.7.1. Any proposal may be withdrawn at any time before the due date and time by providing a written request for the withdrawal of the proposal to the issuing office. A duly authorized representative of the firm shall execute the request. Withdrawal of a proposal will not prejudice the right of the proposer to file a new proposal.

3.8. OPENING OF PROPOSALS

- 3.8.1. Proposals shall be opened and the names of all Proposers shall be read at the date and time listed in the Schedule, Section 1.3. Proposals will not be read aloud (OAR 137-047-0450(2)). Proposals shall be opened at the following location:

Klamath County
305 Main Street Suite 216
Klamath Falls, OR 97601

- 3.8.2. Proposals submitted on time become the property of Klamath County upon submission, and the proposal will not be returned to the proposers. By submitting, the proposer agrees that Klamath County may copy the RFP submittal for purposes of facilitating Klamath County's evaluation. In addition, Klamath County is not responsible for any costs incurred by proposer in the preparation of the proposals in response to this RFP.

3.9. AWARD

- 3.9.1. The Board of Commissioners will consider award of the project based on the Klamath County Tax Collector/Property Manager's recommendation and will authorize the Klamath County Tax Collector to execute a contract. The contract will be awarded to the proposer who, in the opinion of the County, offers the best combination of qualifications, experience and cost, and meets all required specifications. The County may reject any proposal not in compliance with all prescribed public procurement procedures and requirements and may reject for good cause any and all proposals upon a finding that it is in the public interest to do so.

- 3.9.2. If County receives Proposals identical in price, fitness, availability and quality and chooses to award a Contract, County shall award the Contract in accordance with the procedures outlined in OAR 137-047-0600(1) (C).

3.10. PROTEST OF AWARD

- 3.10.1. The award by the Board of Commissioners shall constitute a final decision of the County to the contract if no written protest of the award is filed with County within seven (7) calendar days of the Notice of Intent to Award. The written protest 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. The County will not entertain a protest submitted after the time period established in this rule. Any Board of Commissioner ruling in the protest will be final.

3.11. CONTRACT

- 3.11.1. As applicable, upon execution of the final agreement, this solicitation and the successful response will become part of the contract.

- 3.11.2. A sample contract is provided as Attachment B; conditions and terms may be modified at the time of contract negotiations.

- 3.11.3. County is not obligated as a result of the submission of a Proposal to enter into a Contract with any Proposer, and has no financial obligation to any Proposer arising from the RFP.

3.12. INCURRED COSTS

- 3.12.1. The County is not liable for any costs incurred by a proposer in the preparation and/or presentation of a proposal.

3.13. OWNERSHIP OF PROPOSAL DOCUMENTS

3.13.1. Any material submitted by a proposer shall become the property of the County. Materials submitted after a contract is signed will be subject to the ownership provision of the executed contract.

3.14. PROPRIETARY INFORMATION

3.14.1. The opened proposals shall be available for public inspection (ORS 192.420 to 192.505) except to the extent the proposer designates trade secrets or other proprietary data to be confidential. (ORS 192.501(2))

3.15. PUBLIC RECORD

3.15.1. All Proposals are public information after the Proposals have been opened, and all protests are public information after the protest period ends. The Contract and Risk Manager shall open proposals at the date and time listed in the Schedule, Section 1.3. Copies of Proposals, however, shall not be provided until the evaluation process has been completely closed and a Notice of Intent to Award has been issued pursuant to OAR 137-047-0610. Any person may request copies of public information. Proposers shall label any information as *italicized and underlined* that it wishes to protect from disclosure to third parties as a trade secret under ORS 192.501(2) with the following: "This material constitutes a trade secret under ORS 192.501(2) and is not to be disclosed except as required by law." County shall take reasonable measures to hold in confidence all such labeled information, but the County shall not be liable for release of any information when required by law or court order to do so, whether pursuant to the Oregon Public Records Law or otherwise and shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

3.16. EQUAL OPPORTUNITY POLICY

3.16.1. The County requires all Proposers to comply with equal opportunity policies. Its programs, services, employment opportunities, and volunteer positions and contracts are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, handicap, political affiliation, or any other protected class. A copy of the County's policy is available upon request.

3.16.2. Proposers shall use recyclable products to the maximum extent economically feasible in the preparation of the proposal and in the performance of the work set forth in this RFP.

3.17. RESERVATION OF COUNTY RIGHTS

3.17.1. County reserves all rights regarding the RFP, including, without limitation, the right to:

- Amend, delay or cancel the RFP without liability if County finds it is in the best interest of the County to do so;
- Reject any or all Proposals received upon finding that it is in the best interest of the County to do so;
- Waive any minor informality or non-conformance with the provisions or procedures of the RFP, and seek clarification of any Proposal, if required;
- Reject any Proposal that fails substantially to comply with all prescribed RFP procedures and requirements;
- Negotiate a Statement of Work based on the Scope of Work described in Section 1.4 and to negotiate separately in any manner necessary to serve the best interest of the public;
- Amend any Contracts that are a result of the RFP;
- Engage consultants by selection or procurement independent of the RFP process or any Contracts or agreements under it to perform the same or similar services; and
- To extend any Contracts that result from the RFP without an additional RFP process for up to two, one-year terms.

3.17.2. Although price is a consideration in determining the apparent successful Proposer, the intent of the RFP is to identify a Proposal from a Proposer that has a level of specialized skill, knowledge and resources to perform the work described in the RFP. Qualifications, performance history, expertise, knowledge and the ability to exercise sound professional judgment are primary considerations in the selection process. Due to the highly technical nature of some of these tasks, the Proposer with the lowest Price Proposal may not necessarily be awarded a Contract. County reserves the sole right to determine the best Proposal.

4. EVALUATION AND AWARD

4.1. EVALUATION PROCESS

4.1.1. Evaluation Overview.

4.1.1.1. County shall conduct an evaluation of the Proposals received in response to the RFP.

4.1.2. Evaluation Committee.

4.1.2.1. County shall establish an evaluation committee which may consist of County staff, government partners and community partners to review, evaluate and score each Proposal.

4.1.3. Disqualification.

4.1.3.1. Any attempt by a Proposer to improperly influence a member of the evaluation committee during the proposal review and evaluation process shall result in proposal rejection.

4.2. **EVALUATION OF PROPOSAL (SCORED)**

4.2.1. The evaluation committee shall score all Proposals using the quantity and quality of information described in this Section. Points assigned by each evaluation committee member shall be added together and divided by the total number of evaluation committee members to compute an average score for the evaluation questions.

4.2.2. The evaluation committee may request additional clarification from Proposers for any portion of the Proposals. If a Proposal is unclear, Proposer may be asked to provide clarification. No new information or documentation may be submitted, however, and clarifications may not be used to rehabilitate a non-responsive Proposal.

4.2.3. Awarding of a proposal will be based upon a qualifications-based selection procedure. The following evaluation criteria will be used to evaluate proposals. Proposals will be scored on the following criteria:

Proposal Category	Points
Project Vision	25
Project Plan	200
Project Impact	25
Financial Strategy	75
Project Management and Development Team Information	75
Initial Total	400
Interview Presentation	100
Grand Total	500

4.3. **REFERENCE CHECKS FOR THE PROPOSER’S COMPANY**

4.3.1. County reserves the right to request references in addition to those provided by the Proposer (References), to investigate any references whether or not furnished by the Proposer, and to investigate the past performance of any Proposer. County may investigate the qualifications of a Proposer, including but not limited to: successful performance of similar services; compliance with specifications and contractual obligations; its completion or delivery of services on schedule; and its lawful payment of suppliers, subcontractors, and workers. County may postpone the award or execution of the Contract after the announcement of the apparent successful Proposer in order to complete its investigation. See other Reservation of County’s Rights in Section 3.15.

4.3.2. **Preference for Oregon Supplies and Services.**

4.3.2.1. If County receives Proposals identical in price, fitness, availability and quality and chooses to award a Contract, County shall award the Contract in accordance with the procedures outlined in OAR 137-047-0600(1)(C).

4.4. **AWARD NOTIFICATION AND PROCESS**

4.4.1. **Successive Selection and Rejection.** If the apparent successful Proposer does not accept the Contract offered within 10 business days of the apparent successful Proposer's receipt of the Contract, or such later date as County may authorize, County may make another selection. All Proposers shall be notified of the status of their Proposal. If all Proposals are rejected, the evaluation committee shall promptly notify all Proposers. No information shall be given to any Proposer (or any other individual) relative to their standing with other Proposers during the RFP process.

4.4.2. **Protest of Intent to Award: see OAR 137-047-0740 & ORS 279B.410 (1)**

4.4.3. Contract Award and *Negotiation*

- 4.4.3.1.** A copy of the sample contract that the County expects the successful proposer to execute is included as Attachment B. Any proposed changes in the language, construction, or requirements of the contract must be raised and resolved. The County reserves the right to negotiate a final contract that is in its best interest.
- 4.4.3.2.** The contract will define the extent of services to be rendered, method and amount of compensation, and will be negotiated with the highest ranked proposer for the project. If agreement is not reached, negotiations will be terminated and the County will consider any other proposals received that were qualified under the requirements of this RFP. When an agreement is reached, a contract for the work will be prepared and executed upon the Board of Commissioners approval.

ATTACHMENTS

Attachment A – Proposal Cover Sheet and Certifications

Attachment B – Professional Services Contract –Sample

All Attachments are incorporated by reference herein.

Appendixes

These reports were prepared by the Klamath County Economic Development Association (KCEDA). For other information/data about the present or future position of the economy, please refer to the contacts listed from their offices in the 'Contacts Regarding Questions' section of this RFP.

Appendix A – Map of Foothills Property (highlighted in blue)

Appendix B – Demographic Reports

Appendix C – Housing Data

Appendix D – Surrounding Businesses Composition

Appendix E – Consumer Expenditures

Appendix F – Labor Force and Talent Pool

Attachment A - Proposal Cover Sheet

Proposer Information

Organization Name: _____

Primary Contact Person: _____ Title: _____

Address: _____

City, State, Zip: _____

Telephone: _____ Fax: _____ Federal Tax ID# _____

E-mail Address: _____

Name and title of the person(s) authorized to represent the Proposer in any negotiations and sign any Purchase Orders that may result:

Name: _____ Title: _____

Minimum Proposal Requirements: This Proposal:

- Meets all Minimum Proposal Requirements described in Section 2.3;
- Addresses all Proposal Requirements described in Section 2 and Section 1.5, Scope of Work; and

Regarding Section 4.3, References, provide at least three (3) references with telephone numbers (please verify numbers) **for the organization.** References shall be able to describe and verify the quality of your equipment and customer service.

Name	Business	Phone Number

Representations, Attestations, and Certifications: The undersigned further acknowledges, attests and certifies individually and on behalf of the Proposer that:

1. No attempt has been made or shall be made by the Proposer to induce any other person or organization to submit or not submit a Proposal.
2. Information and prices included in this Proposal shall remain valid for sixty (60) days after the proposal due date or until a Contract is approved, whichever comes first.
3. The undersigned recognizes that this is a public document and open to public inspection.
4. The Proposer acknowledges receipt of all Addenda issued under the RFP.
5. Proposer does not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin, nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.
6. The Proposer, acting through its authorized representative, has read and understands all RFP instructions, specifications, and terms and conditions contained within the RFP and all Addenda, if any;
7. The Proposer agrees to and shall comply with, all requirements, specifications and terms and conditions contained within the RFP, including all Addenda, if any;

8. The Proposal submitted is in response to the specific language contained in the RFP, and Proposer has made no assumptions based upon either (a) verbal or written statements not contained in the RFP, or (b) any previously-issued RFP, if any.
9. The Proposer agrees that if awarded the Contract, Proposer shall be authorized to do business in the State of Oregon at the time of the award;
10. County shall not be liable for any claims or be subject to any defenses asserted by Proposer based upon, resulting from, or related to, Proposer's failure to comprehend all requirements of the RFP.
11. The County shall not be liable for any expenses incurred by Proposer in either preparing and submitting its Proposal, or in participating in the proposal evaluation/selection or Contract negotiation process, if any.
12. **Recycled Products Certification**
 - Vendors must use recyclable products to the maximum extent economically feasible in the performance of the Contract work set forth in this document.
 - Authorized Agencies must use, or require persons with whom they Contract with to use in the performance of the Contract work, to the maximum extent economically feasible, recycled paper products as well as other recycled plastic resin products. (ORS 279B.270(1)(e)).
13. The signatory of this Proposal Cover Sheet is a duly authorized representative of the Proposer, has been authorized by Proposer to make all representations, attestations, and certifications contained in this Proposal document and all Addenda, if any, issued, and to execute this Proposal document on behalf of Proposer.
14. By signature below, the undersigned Authorized Representative hereby certifies on behalf of Proposer that all contents of this Proposal Cover Sheet and the submitted Proposal are truthful, complete and accurate. Failure to provide information required by the RFP may ultimately result in rejection of the Proposal.

PROPOSER SHALL PROVIDE A FEDERAL EMPLOYEE IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER WITH THE OFFER SUBMISSION (PROPOSAL).

SIGNATURE OF PROPOSER'S DULY AUTHORIZED REPRESENTATIVE FOR ALL SECTIONS:

Authorized Signature: _____

Print Name: _____

Title: _____

FEIN ID# or SSN# (required): _____

Contact Person (Type or Print): _____

Telephone Number: (____) _____

Fax Number: (____) _____

Independent Contractor Certification Statement
[as required by OAR 125-246-0333]

Klamath County Departmental Certification

In order to comply with the provisions of ORS 670.600, an individual or business entity performing labor or services for remuneration shall be considered to perform the labor or services as an "Independent Contractor" if the following standards are met:

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing the labor or services is responsible for obtaining all assumed business registrations or professional occupational licenses required by state law or local government ordinance for the individual or business to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for the performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

In hereby certify that the contracted work or intended contracted work meets these standard.

Department Head Date

(Contractor/Proposed Contractor is to complete the next page)

To establish status as an "independent contractor" as defined in ORS 670.600, certain standards must be met by the individual or business entity performing that work.

The undersigned certifies that he/she/the business entity meets the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, "construction Contractors", if the individual or business entity provides labor or services for which such registration is required; and,
2. Federal and state income tax returns in the name of the business or business Schedule C or farm Schedule F as part of the person income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and,
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when individual or business entity files a Schedule F as part of the person income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist.

Contractor is to check four or more of the following:

The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

Commercial advertising or business cards are customary in operating similar businesses, are for the business, or the individual or business entity has a trade association membership;

Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or service;

Labor or services are performed only pursuant to written contracts.

Labor or services are performed for two or more different persons within a period of one year; or,

The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership or performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be performed.

Contractor Signature

Date

Printed Name

Federal Tax ID #

BIDDER/PROPOSER RESIDENCY STATEMENT

Pursuant to ORS 279A.120, Oregon’s Reciprocal Preference Law, public contracting agencies shall, for the purposes of determining the lowest responsible bidder/proposer and the awarding of a contract, add a percent increase on the bid of a non-resident bidder/proposer equal to the percent, if any, of the preference given to that bidder/proposer in the state in which the bidder/proposer resides.

As defined in ORS 279A.120, “Resident Bidder/proposer” means a bidder/proposer that has paid unemployment taxes or income taxes in this state in the twelve calendar months immediately preceding submission of the bid, has a business address in this state, and has stated in the bid whether the bidder/proposer is a “Resident Bidder/proposer”. A “Non-resident Bidder/proposer” is a bidder/proposer who does not meet the definition of a “Resident Bidder/proposer” as stated above.

1. Bidder/Proposer IS IS NOT a “Resident Bidder/proposer” as set forth above.

2. If a Resident Bidder/proposer, enter your Oregon Business address below:

3. If a Non-resident Bidder/proposer, enter state of residency:

Bidder/Proposer hereby certifies that the information provided is true and accurate.

Signature: _____

Date: _____

Printed or Typed Name: _____

Title: _____

Firm: _____

Telephone: _____

105-050-000

137-049-0230.

CONTRACTOR'S CERTIFICATION REGARDING DRUG TESTING PROGRAM

(1) Pursuant to OAR 137-049-0200, contractor certifies by its signature on this document that it has a Qualifying Drug Testing Program in place for its employees that includes, at a minimum, the following:

- (a) A written employee drug testing policy, (b) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
- (c) Required testing of a Subject Employee when the contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

(2) A drug testing program that meets the above requirements will be deemed a "Qualifying Employee Drug Testing Program." An employee is a "Subject Employee" only if that employee will be working on the Project job site.

(3) Contractor agrees that by signing this certification it represents and warrants to the County that its Qualifying Employee Drug Testing Program is in place and will continue in full force and effect for the duration of the Contract. The County's performance obligation (which includes, without limitation, the County's obligation to make payment) shall be contingent on Contractor's compliance with this representation and warranty.

(4) Contractor also agrees that, as a condition to County's performance obligation (which includes, without limitation, the County's obligation to make payment), contractor shall require each Sub-Contractor providing labor for the project to:

- (a) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Sub-Contractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or (b) Require that the Sub-Contractor's Subject Employees participate in the Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.

CONTRACTOR

Firm Name

By: _____

Name: _____

(Corporate Officer, Title)

Date: _____

CERTIFICATE OF NON-DISCRIMINATION

Pursuant to ORS 279A.110, discrimination in subcontracting is prohibited. Any contractor who contracts with a public contracting agency shall not discriminate against minority, women or emerging small business enterprises or a business enterprise that is owned or controlled by or that employs a disabled veteran in the awarding of contracts.

By signature of the authorized representative of the bidder/proposer, the bidder/proposer hereby certifies to Klamath County that this bidder/proposer has not discriminated against minority, women, or emerging small business enterprises will not discriminate against minority, women or against a business enterprise that is owned or controlled by or that employs a disabled veteran in obtaining any subcontracts; and, further, that if awarded the contract for which this bid or proposal is submitted, shall not so discriminate.

Date: _____

Signature: _____

Printed or Typed Name: _____

Name of Firm: _____

COMPLIANCE WITH OREGON TAX LAWS

The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned’s knowledge, not in violation of any Oregon Tax Laws.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor.

Date: _____

Signature: _____

Printed or Typed Name: _____

Name of Firm: _____

CERTIFICATE OF COMPLIANCE WITH ORS 305.380 AND 305.385

The undersigned, as provider or potential provider of goods, services or real estate space to Klamath County, hereby certifies under penalty of perjury that to the best of my knowledge, the undersigned is not in violation of any Oregon tax described in ORS 305.380(4).

Date: _____

Signature: _____

Printed or Typed Name: _____

Name of Firm: _____

CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants to Klamath County that:

1. Contractor has the power and authority to enter into and perform this Contract.
2. This Contract, when executed and delivered, is a valid and binding obligation of Contractor, enforceable in accordance with its terms.
3. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the effective date of this Contract, faithfully has complied with:
 - 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.

4. Any Goods/Items/Equipment/Components/Hardware/Software/Intellectual Property Rights, etc. delivered to/granted to Klamath County under this Contract, and Contractor's Services rendered in the performance of Contractor's obligations under this Contract, shall be provided to Klamath County free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

Date: _____

Signature: _____

Printed or Typed Name: _____

Name of Firm: _____

KLAMATH COUNTY

CONTRACT FOR PERSONAL OR PROFESSIONAL SERVICES

This Client Services Contract (Contract) is between the Klamath County ("County") acting by and through _____ ("Department"), and Contractor's name("Contractor"). This Contract is effective on the date it has been signed by all parties and expires on _date_. Upon mutual consent the parties may extend the term of this Contract for two (2) additional one (1) year terms

The Department's Contract Administrator for this Contract is: _____
Phone Number: _____ Address: _____

The Contractor's Contract Administrator for this Contract is: _____
Phone Number: _____ Address: _____

1. Services to be Provided.

a. **Required Services.** Deliverables and Delivery Schedule. Contractor shall provide, or cause to be provided, as an independent contractor and not as an agent of the County, ****services, as specified in "Exhibit A" (Proposal), attached to and hereby made a part of this contract. [Proposal shall include: Work to be done, schedule of Work, deliverables and tasks, performance monitoring requirements, criteria for acceptance by Department, documents and reporting requirements.]

b. **Special Requirements.**

i. **Confidentiality of Information.** The use or disclosure by any party of any information concerning a recipient of Services purchased under this Contract, for any purpose not directly connected with the administration of the Department's or the Contractor's responsibilities with respect to such purchased Services, is prohibited, except on written consent of the Department.

ii. **Client Records.** Contractor shall appropriately secure all records and files to prevent access by unauthorized persons. The Contractor shall, and shall require its employees and subcontractors to comply with all appropriate federal and state laws, rules and regulations regarding confidentiality of client records.

iii. **Media Disclosure.** The Contractor shall not provide information to the media regarding Services purchased under this Contract without first consulting the Department. The Contractor will make immediate contact with the Department's office when media contact occurs. The Department will assist the Contractor with an appropriate follow-up response for the media.

2. Compensation.

i. For services provided under this Contract, the Contractor shall be compensated in an amount not to exceed \$_____. (Optional) County shall pay Contractor \$___ per hour up to but not in excess of \$ _____ for completing all Services required under this Contract.)

ii. In the event the Board of Commissioners of Klamath County reduces, changes, eliminates, or otherwise modifies the funding for this contract, or if funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services, the County may terminate this contract, in whole or in part, effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County, and Contractor agrees to abide by any such decision.

3. **Subcontracts, Assignment, Successors.** Contractor shall not enter into any subcontracts for any of Services required under this Contract without Department's prior written consent. In addition to any other provisions Department may require, Contractor shall include in any permitted subcontract provisions to ensure that Department will receive the benefit of subcontractor's performance as if the subcontractor were Contractor. Department's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

4. **Assignments.** Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Department's prior written consent. Department's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.

5. **Successors.** The provisions of this Contract are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.
6. **Ownership of Work Product.** All work product of the Contractor that results from this Contract (the “Work Product”) is the exclusive property of the County. The County and the Contractor agree that such Work Product be deemed “work made for hire” of which the Department be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” the Contractor hereby irrevocably assigns to the 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. The Contractor shall execute such further documents and instruments as the Department, or both, may reasonably request in order to fully vest such rights in the County. The Contractor forever waives any and all rights related to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification or authorship or rights of approval, restriction or limitation on use or subsequent modifications.
7. **Termination.**
 - a. This Contract may be terminated by either party by giving written notice to the other party at least thirty (30) days prior to the termination date.
 - b. The County reserves the right to terminate this Contract upon ten (10) days notice should the Contractor fail to comply with the provisions of the Insurance section of this Contract.
 - c. The County reserves the right to immediately terminate this Contract upon loss of licensure of Contractor.
 - d. The County reserves the right to terminate this Contract with twenty-four (24) hours notice should the County find the Contractor has failed to provide the agreed upon services in keeping with the conditions of this contract, or relevant law, rule or regulation or has performed in a manner determined to have violated the civil rights of, or otherwise caused harm to, any individual serviced under this contract.
8. **Amendments.** This Contract may be amended to the extent permitted by applicable statutes and administrative rules. No waiver, consent, or amendment of terms of this Contract shall bind either party unless in writing and signed by County and Contractor, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
9. **Access to Records.** Klamath County, Department, and their duly authorized representatives shall have access to the Contractor’s books, documents, papers and records pertinent to this Contract for the purpose of making audit, examination, excerpts and transcripts.
10. **Compliance with Applicable Laws and Standards.**
 - a. The Contractor, throughout the duration of this Contract and any extensions, shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to the Contractor’s obligations under this Contract, as those laws, regulations and ordinances may be adopted or amended from time to time.
 - b. The Department’s performance under this Contract is conditioned upon the Contractor’s compliance with ORS 279B.220, 279B.225, 279B.230 and 279B.235. The Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010 (1) (ee)), recycled PETE products (as defined in ORS 279A.010 (1) (ff)), and other recycled plastic resin products and recycled products (as “recycled product” is defined in ORS 279A.010 (1) (gg)).
 - c. Any violation of subsection (a.) of this section shall constitute a material breach of this Contract. Further, any violation of this Contract, which Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle the County to terminate this Contract, to pursue and recover any and all damages that

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

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

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

11. **Independent Contractor; Responsibility for Taxes and Withholding.** The Contractor shall perform all required Services as an independent contractor. Although the Department may (a) determine and modify the delivery schedule for Services to be performed and (b) evaluate the quality of the completed performance. The Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract. The Contractor certifies, represents and warrants that the Contractor is an independent contractor of the County under all applicable state and federal law. The Contractor is not an "officer," "employee," or "agent" of the County as those terms are used in ORS 30.265.
12. **Indemnification.** Contractor agrees to defend, indemnify and save County, its agents, officers and employees harmless from any and all losses, claims, actions, costs, expenses, judgments, subrogation or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, arising or resulting from the fault, negligence, wrongful act or wrongful omission of Contractor or its agents or employees.
13. **Insurance.** Contractor shall procure and maintain in force, for the entire duration of this Contract, insurance providing coverage for bodily injury and property damage which may arise out of the operations of the Contractor or his subcontractors, employees, agents, assigns or for anyone whose acts any of them may be liable. Such insurance shall have coverage limits equal to or greater than the minimum limits set forth herein.
- a. Contractor shall furnish to Klamath County an Accord 25-S certificate of insurance evidencing the existence of all insurance coverage(s) required by this contract prior to the commencement of any work.
 - b. Contractor shall endorse the Contractor General Liability (CGL) to include Klamath County as an "additional insured", including coverage for products and completed operations, and a copy of this endorsement shall accompany each certificate. The additional insurance endorsement shall be CG2010\1985 edition or its equivalent.
 - c. **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 30 days' written notice from the Contractor or its insurer(s) to the County.
 - d. Contractor's insurance shall be primary and not excess to, or contributory with any insurance coverage provided by Klamath County. Contractor's insurance shall be endorsed to provide project specific aggregate limits with respect to project covered by this contract.
 - e. CGL coverage, including products and completed operations coverage, shall be maintained from the date work commences until two years after the work has been completed.
 - f. If the work required by this contract or the location of the work specified in this contract constitutes an exposure to the employees of the contractor or his subcontractors under the U.S. Longshoremen and harbor

Workers Act, The Jones Act, or under any laws, regulations or statutes that apply to maritime workers, the contractor shall ensure that proper coverage is purchased and maintained.

- g. Contractor and all Subcontractors shall endorse the Worker's Compensation coverage to provide a "waiver of subrogation" in favor of Klamath County when available.
- h. Klamath County will waive the required Worker's Compensation (WC) coverage if the Contractor submits a letter, on official letter head, stating they agree that they will obtain WC coverage immediately upon utilizing volunteers or hiring any employees during the period of the contract.
- i. Klamath County will waive the required Auto Liability coverage if the Contractor submits a letter, on official letter head, stating absolutely no driving will be done related to the contract and that they will obtain Auto Liability coverage in advance if they travel in any way in support of the contract, i.e. training our staff, meetings to implement, etc.
- j. Contractor shall ensure that the County is provided with a renewal certificate at least thirty (30) days prior to the expiration date of the coverage in the event that the original certificate expires prior to the scheduled termination of the Contract.

❖ **Personal Services Contracts:** Used to contract for personal services such as consultants or trainers.

a. Contracts should have the following:

- General Liability
 - Each Occurrence \$2,000,000
 - Aggregate \$4,000,000
 - Operations \$2,000,000
 - Products and Completed
 - Personal/Advertising Injury \$2,000,000
- Auto Liability
 - Combined Single \$2,000,000
- Workers' Compensation
 - Statutory Limits
 - Employers Liability
 - \$1,000,000
- Indemnity Clause

❖ **Professional Liability Coverage.** Professional Liability Coverage covering any damages caused by an error, omission or any negligent or wrongful acts related to the services to be provided under this contract. Per occurrence (for all claimants for claims arising out of a single accident or occurrence) in the amount of \$2,000,000 and \$4,000,000 Professional Aggregate.

- 14. **No Third Party Beneficiaries.** The County and the 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.
- 15. **Merger.** This Contract constitutes the entire agreement between the parties, and there are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.
- 16. **Health Insurance Portability and Accountability Act.** If the Services funded in whole or in part with financial assistance provided under this Contract are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), Contractor agrees to deliver the Services in compliance with HIPAA. Without limiting the generality of the foregoing, Services funded in whole or in

part with financial assistance provided under this Contract are covered by HIPAA. Contractor shall comply and cause all Providers to comply with the following:

- a. Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and County for purposes directly related to the provision of services to Contractor's clients, which are funded in whole or in part under this Contract. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate the Oregon Privacy Rules, OAR 410-014-0000 et. Seq., or County policy, Section 900."HIPAA Policy" of the Klamath County Human Resources Policy & Procedures Manual, if done by County. A copy of the most recent Klamath County Human Resources Policy & Procedures Manual is available through the Human Resources Department at 305 Main Street, Klamath Falls, Oregon 97601.

17. Events of Breach.

- a. Breach by Contractor. Contractor breaches this Contract if:
 - i. 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;
 - ii. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the license or certificate within fourteen (14) calendar days after Department delivers notice of breach to Contractor or a longer period as Department may specify in the notice; or
 - iii. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform its obligations under this Contract within the time specified or any extension of that time, and Contractor fails to cure the breach within fourteen (14) calendar days after Department delivers notice of breach to Contractor or a longer period as Department may specify in the notice.
 - iv. Contractor is in breach or default in any other contracts or agreements with the County.
- b. **Breach by County.** County breaches this Contract if:
 - i. County fails to pay Contractor any amount pursuant to the terms of this Contract, and County fails to cure its failure to pay within fourteen (14) calendar days after Contractor delivers notice of breach to County or a longer period as Contractor may specify in the notice; or
 - ii. County commits any material breach of any covenant, warranty, or obligation under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and County fails to cure the breach within fourteen (14) calendar days after Contractor delivers notice of breach to County or a longer period as Contractor may specify in the notice.

18. Remedies.

- a. County's Remedies. If Contractor is in breach, then in addition to the remedies afforded elsewhere in this Contract, 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. County may, at Department's option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:
 - i. Termination of this Contract;
 - ii. Withholding payment of all amounts in Contractor's invoices for Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;

- iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or
 - iv. 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.
- b. 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. If it is determined for any reason that Contractor was not in breach, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to section 7.
 - c. Contractor's Remedies. If County is in breach of contract, Contractor's sole remedy is one of the following, as applicable:
 - i. For Services compensable on an hourly basis, a claim against County for unpaid invoices, hours worked but not yet invoiced, and authorized expenses for Services completed and accepted by Department less any claims County has against Contractor.
 - ii. For deliverable-based Services, a claim against County for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Department, less previous amounts paid and any claims County has against Contractor.
 - d. If previous amounts paid to Contractor for Services and Goods exceed the amount due to Contractor, Contractor shall pay the excess amount to County immediately upon written demand.
19. **Severability.** The parties agree that if any term or provision of this Contract is declared by a court or 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.
20. **Attorney Fees.** In the event suit or action is instituted to enforce any of the terms of this Contract, each party shall be responsible for its own attorney fees costs and related expenses.
21. **Notices.** Any notice required to be given pursuant to this Contract shall be in writing and may be given by personal delivery or by registered or certified mail, addressed to County or Contractor at the address provided in this contract, or to either party in any other manner prescribed by law.
22. **Conflict of interest.**
- a. Klamath County desires to have the Contractor refrain from activities which could be interpreted as creating an organizational conflict of interest.
 - b. The Contractor agrees to avoid any activities which may influence the decisions of Klamath County or which directly or indirectly affect the interest of the County where the Contractor has a personal interest in the matter which may be incompatible with the interest of Klamath County Government, and to promptly notify County regarding any change in Contractor's private interests or the Services under this Agreement which may result or appear to result in a conflict of interest.

23. **Authorization**

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that: The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor.

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Contract for _____ between _____
and _____ -- for the term
beginning _____ - through _____.

CONTRACTOR:

Address

Address

Phone: (***) ***-***

Signature: _____

Printed or Typed Name: _____

Federal I.D. # _____

Date: _____

**KLAMATH COUNTY BOARD
of COMMISSIONERS:**

305 Main Street
Klamath Falls, OR 97601

(541) 883-5100

Approved this ____ day of _____, 20__.

Chair

Commissioner

Commissioner

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Klamath County Counsel