



**LCOG SOLICITATION NO. 2022-0002**  
Oregon22 Airport Shuttle

**SAMPLE CONTRACT**

*This Contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (“Effective Date”) between LANE COUNCIL OF GOVERNMENTS (“LCOG”), an independent public agency and a political subdivision of the State of Oregon, and [INSERT NAME] (“\_\_\_\_” or “CONTRACTOR”), a corporation organized pursuant to the laws of the \_\_\_\_\_. LCOG and Contractor may hereinafter from time to time be referred to as “Party” or “Parties.”*

**RECITALS**

**WHEREAS**, LCOG desires to enter into a Contract with CONTRACTOR to provide passenger transportation services as described in LCOG Solicitation No. 2022-0002 (“the solicitation”), fully conformed, and incorporated herein by reference (“Services” or the “Work”); and

**WHEREAS**, LCOG has selected CONTRACTOR to provide the Services in accordance with its Procurement Policy and Rules Manual; and

**WHEREAS**, the CONTRACTOR has represented to LCOG that it is sufficiently qualified and experienced to provide those Services detailed in the solicitation, and LCOG has relied on such representations; and

**WHEREAS**, sufficient authority exists in LCOG’s rules and regulations and state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained.

**NOW, THEREFORE**, in consideration of the mutual understandings and agreements set forth, LCOG and the CONTRACTOR agree as follows:

**ARTICLE 1 – SCOPE OF WORK**

The required Services are as enumerated and described in Exhibit A – Scope of Work, which document is attached hereto and incorporated herein.

**ARTICLE 2 – COMPENSATION AND PAYMENT**

The terms for Compensation and Payment are set forth in Exhibit B – Compensation and Method of Payment for Services, attached hereto and incorporated herein. The total value of the Contract, as specified in Exhibit B – Compensation and Method of Payment, may only be

modified by written agreement of both Parties to the Contract in the form of a Contract Amendment as specified in Article 13 below.

Any services not required by the terms of this Contract that are performed without prior written authority from LCOG, will be considered as unauthorized and at the sole expense of Contractor. Services so performed will not be compensated, and no extension in the period of performance will be granted on account thereof.

The Parties agree that LCOG is a governmental entity and that all obligations beyond the current fiscal year are subject to funds being budgeted and appropriated by its Board of Directors. Notwithstanding anything to the contrary contained in this Contract, no charges shall be made to LCOG nor shall any payment be made to the Contractor in excess of the amount for any services provided without prior written approval, and in accordance with a budget adopted by the LCOG Board of Directors.

LCOG's financial obligation under the Contract shall be contingent upon the availability of appropriated funds from which payment for contract purposes can be made.

### **ARTICLE 3 – CONTRACT TYPE AND TERM**

This is a Fixed Rate Contract. The total possible maximum contract period shall not exceed 1 month.

### **ARTICLE 4 – PERIOD OF PERFORMANCE**

- (1) The period of performance under the Contract is for 1 month, commencing on July 1, 2022, and concluding on July 31, 2022.
- (2) Contractor will not be considered in default in the performance of its obligations with respect to schedule for completion of tasks affected to the extent that the performance of any such obligation is prevented or delayed by an excusable delay. Should Contractor's Services be delayed by an excusable cause, Contractor's schedule for completion of tasks affected by such delay may be extended. Excusable delays may include, but are not limited to, Acts of God or acts or failures to act of government agencies, including LCOG in either their sovereign or contractual capacities; fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, civil disturbances; provided, however, that in every case the failure to perform must be reasonably beyond the control, and without the fault or negligence of, the Contractor. No action or failure to act that is expressly contemplated by this Contract will be deemed an excuse for Contractor's nonperformance.

Within thirty (30) days after the last day of delay, Contractor will furnish LCOG with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract references, and the measures taken to prevent or minimize the delay. Failure to submit such information in a timely manner will be sufficient cause for denying the delay claim.

- (3) The selected Contractor will be required to perform until the end of the contract period.

## **ARTICLE 5 – CONTRACT AND CONTRACT DOCUMENTS**

The Contract consists of the following documents:

- (1) Contract between LCOG and Contractor
- (2) Exhibit A – Scope of Work
- (3) Exhibit B – Compensation and Method of Payment for Services
- (4) Exhibit C – LCOG Request for Proposals No. 2022-0002, fully conformed and inclusive of all addenda to the RFP (by reference)
- (5) Exhibit D – Contractor’s Proposal in response to RFP No. 2022-0002

In addition, all modifications to the Contract after contract execution shall be made in the form of Contract Amendments in accordance with Article 13 below and shall be incorporated into and made part of the Contract.

The documents specified in the paragraph above form the Contract between LCOG and Contractor. This Contract represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Contract Amendment as defined in Article 13 below.

## **ARTICLE 6 – ORDER OF PRECEDENCE OF THE CONTRACT DOCUMENTS**

In the event of inconsistency between provisions of the Contract Documents, the inconsistency will be resolved by giving precedence in the following order:

- (1) Contract Amendments
- (2) Contract between LCOG and Contractor
- (3) Exhibit A – Scope of Work
- (4) Exhibit B – LCOG Solicitation No. 2022-0002, fully conformed and inclusive of all addenda to the RFP

## **ARTICLE 7 – PROJECT AUTHORIZATION AND PERFORMANCE**

- (1) Following contract execution, LCOG will issue a Notice to Proceed to Contractor, and which shall authorize and direct Contractor to begin work on the Contract. The Contractor shall begin work no later than July 1, 2022.
- (2) Standard of Performance. Contractor will perform and require its subcontractors to perform the Services in accordance with the requirements of this Contract and in accordance with professional standards of skill, care, and diligence adhered to by firms recognized for their expertise, experience and knowledge in performing services of a similar nature. Contractor will be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, it being understood that LCOG will be relying upon such professional quality, accuracy, completeness, and coordination in utilizing the Services. The foregoing obligations and standards will constitute the "Standard of Performance" for purposes of this Contract.

- (3) All workers will have sufficient skill and experience to perform the work assigned to them. LCOG will have the right, in its sole and absolute discretion, to require the removal of Contractor's personnel at any level assigned to the performance of the Services at no additional cost to LCOG, if LCOG considers such removal necessary in its best interests and requests such removal in writing. Further, an employee who is so removed will not be re-employed on this Contract.

#### **ARTICLE 8 – CONTRACT MANAGER AND KEY PERSONNEL**

- (1) The LCOG Contract Manager for this Contract is Kelly Clarke, with LCOG's transportation planning staff, unless otherwise designated in writing by the LCOG Executive Director.
- (2) Contractor's Key Personnel. The following are the key personnel assigned to perform the Services and their roles under this Contract: \_\_\_\_\_
  - a. Contractor will not reassign such key personnel to other projects without LCOG's prior written approval and until a satisfactory replacement has been approved by LCOG. Contractor will secure the prior written approval of LCOG for any change or reassignment of key personnel, submitting written documentation of the new individuals' qualifications.
  - b. Contractor's General Manager will supervise and direct the Services, and have overall responsibility for the Services in accordance with this Contract. Contractor will be solely responsible for implementation of all services, means, methods, techniques, sequences and procedures and for coordination of all portions of the Service under this Contract.

#### **ARTICLE 9 – INDEPENDENT CONTRACTOR**

The Contractor is not an officer, employee, or agent of LCOG or the State of Oregon as those terms are used in the State Tort Claims Act (ORS 30.265).

Contractor shall perform the Services required under this Contract as an Independent Contractor, not as an agent or employee of LCOG. Contractor has no authority to make any statement, representation, or commitment of any kind or to take any action binding upon LCOG, without LCOG's written authorization. LCOG is only interested in the results achieved by the Services performed by the Contractor; the manner of legally achieving those results is the responsibility of the Contractor.

All of the Services required by this Contract shall be performed by Contractor or under its supervision, and all personnel engaged in the Services shall be fully qualified.

Furthermore, it is understood that LCOG will not provide insurance or benefits of any nature to the Contractor, its employees, or subcontractors.

The Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Services

hereunder. The Contractor further agrees that in the performance of the Contract, no person having any such interests shall be employed.

## ARTICLE 10 – INVOICING AND PAYMENT

LCOG will pay Contractor, as full and complete compensation, for completion of the Services pursuant to the Contract, and costs assuming all duties, responsibilities, and obligations under the Contract.

- (1) Contractor shall submit to LCOG's Accounts Payable complete, properly supported and audit-worthy invoices for the Services performed in the preceding month by not later than the 20<sup>th</sup> day of each month. Contractor may submit no more than one (1) invoice to LCOG for every thirty (30) calendar days of the Term of Contract.
- (2) Invoices shall be sent electronically to [payadmin@lcog.org](mailto:payadmin@lcog.org) in PDF format.
- (3) Payment terms are net 31 calendar days following receipt of a correct and audit-worthy invoice by LCOG. A correct and audit-worthy invoice shall include the following:
  - a. Name of service
  - b. Total invoice amount (including itemized amounts charged for labor, materials, fuel, bus lease, lodging, additional amounts as negotiated)
  - c. Total number of labor hours expended and labor billing rates
  - d. Invoice billing period
  - e. Description of the Services performed during the invoice billing period (including completed Deliverables)
  - f. Data that is required for reporting to the National Transit Database (NTD). Data shall include accident, incident, and operations data for the previous month.
  - g. Any other information that LCOG may reasonably require
- (4) The presentation of invoices by Contractor to LCOG constitutes an express warranty and representation by Contractor to LCOG that the Services have progressed to the point indicated and that the quality of the Services is in accordance with this Contract.
- (5) No approval of any invoice, nor any payment, final or otherwise, nor any use or approval of deliverables by LCOG shall itself constitute Acceptance of the Services.
- (6) LCOG may withhold all or part of any amounts due Contractor to protect LCOG from a loss, including but not limited to, losses caused by the following:
  - a. Failure of Contractor to make proper payments to its subcontractors for Services;
  - b. Failure of Contractor to carry out and/or remedy the Services in accordance with the Contract;
  - c. Contractor's breach of warranties.
- (7) Contractor shall maintain books and records supporting all amounts invoiced to LCOG. Contractor shall preserve such books and records for the duration of this Contract and for three (3) years thereafter, during which time LCOG and its representatives shall have

access to such books and records and shall have the right to make any copies thereof for the purpose of auditing or verifying invoices or for any other reasonable business purpose.

Contractor warrants and represents that all books and records specified above shall be complete and accurate and that LCOG may rely on such records and books for any purposes. If Contractor becomes aware that such records are inaccurate or incomplete, Contractor will promptly notify LCOG in writing.

#### **ARTICLE 11 – EMPLOYMENT OF DISTRICT'S PERSONNEL**

The Contractor shall not employ any person or persons in the employ of LCOG for any work required by the terms of this Contract without the written permission of LCOG, except as may otherwise be provided for herein.

#### **ARTICLE 12 – RESERVED**

#### **ARTICLE 13 – CHANGES**

- (1) LCOG shall have the right, without additional consent from Contractor and without invalidating the Contract, to add, delete, or change the required Services.
- (2) Contract Amendments. LCOG shall issue Contract Amendments to make additions, deletions, or changes to the required Services. To initiate a Contract Amendment, LCOG shall send Contractor a Request for Contract Amendment. Upon receipt, Contractor shall prepare an estimate of the effects of the change on the Contract Budget and/or Term of Contract. Upon agreement between Contractor and LCOG on the effects of the change, LCOG will issue a Contract Amendment specifying any change to the Contract Budget or the Term of Contract.
- (3) The Contract Budget and/or Term of Contract shall be subject to adjustment only by Contract Amendment(s).

#### **ARTICLE 14 – SUBSTANTIAL CHANGES**

If, prior to the satisfactory completion of the Services required under this Contract, LCOG materially alters the scope, character, complexity, or duration of the Services from those required under the Contract, a Contract Amendment may be executed between the Parties.

Minor changes in the Services which do not involve increased compensation, extensions of time or changes in the goals and objectives of the Services may be made by written notification of such change by either LCOG or the Contractor with written approval by the other Party.

#### **ARTICLE 15 – ERRORS AND OMISSIONS**

No advantage shall be taken by the Contractor in the omission of any part or detail which goes to make the execution of the service complete even though such part or detail is not named in the Scope of Service. Contractor will carefully study this Contract; will verify all figures in these contract documents before performing the Services; will promptly notify LCOG of all errors, inconsistencies, and/or omissions that it discovers; and, in instances where such nonconformities are discovered, will obtain specific instructions in writing from LCOG before proceeding with the Services. Any Services affected which are performed prior to LCOG decision will be at Contractor's risk.

LCOG will be entitled to make such corrections therein and interpretations thereof as it may deem necessary for the fulfillment of the intent of this Contract. Omissions or erroneous descriptions of any Services that are manifestly necessary to carry out the intent of this Contract, or that are customarily performed, will not relieve Contractor from performing such Services at no additional expense and/or delay, and such Services will be performed as if fully and correctly set forth in this Contract.

#### **ARTICLE 16 – INDEMNIFICATION**

- (1) Professional Liability. The Contractor shall exercise in its performance of the Services the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Contractor shall be liable to LCOG for any loss, damages or costs incurred by LCOG for the repair, replacement or correction of any part of the project or services to be rendered which is deficient or defective as a result of any failure of the Contractor to comply with this standard.
- (2) Indemnification. To the fullest extent permitted by law and except for all professional liability claims, damages, losses and expenses, the Contractor shall indemnify, defend, and hold harmless LCOG and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Services, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the project itself) including the loss of use resulting there from, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Contractor, any subcontractor of the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Contract. LCOG may, if it so desires, withhold the payments due the Contractor so long as shall be reasonably necessary to indemnify LCOG on account of such injuries.

In any and all claims against LCOG or any of its agents or employees by any employee of the Contractor, any subcontractor of the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Contract shall not be limited in any way by any

limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor.

The Parties agree that nothing contained herein waives or is intended to waive any other rights, protections, immunities, defenses or limitations on liability provided by law, and subject to any applicable provisions of the Oregon Constitution and applicable laws.

### ARTICLE 17 – INSURANCE

- (1) CONTRACTOR shall procure and maintain, until all of its obligations under this Contract have been discharged, including until any warranty periods under this Contract are satisfied, the following types of insurance coverage and limits of liability. These insurance requirements and the obligations of the indemnification agreement that is part of this contract shall apply to anyone hired by CONTRACTOR to work under this agreement. CONTRACTOR shall procure and maintain in effect the following types of insurance at least as broad and with limits of liability not less than those stated below.
- (2) Within seven (7) days of awarding this contract, the CONTRACTOR shall furnish LCOG's Procurement Manager with Certificates of Insurance indicating the correct insurance coverage has been obtained and is in full force and effect through the next date of notification.
- (3) Types of Insurance and Minimum Limits. The Contractor agrees that it will, at all times during the term of the agreement, keep in force a tort liability insurance policy (policies), issued by a company authorized to transact business in the State of Oregon.

The insurance requirements herein are minimum requirements for this contract. LCOG in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of its performance of the Services under this Contract. The Contractor is free to purchase such additional insurance as it may determine necessary.

- a. Workers' Compensation Insurance. Contractor shall provide Workers' Compensation benefits for persons performing work under this contract in accordance with applicable state and federal laws.
- b. Commercial General Liability Insurance.  
Per Occurrence \$2,000,000  
Aggregate \$4,000,000
- c. Commercial Auto Liability Insurance. In addition, the Contractor shall carry both Collision and Comprehensive coverage on all vehicles covering all owned, non-owned, and hired vehicles used in connection with the work as specified in the Contract.

Combined Single Limit \$2,000,000



d. The Contractor shall secure an Umbrella or Excess Liability policy of \$1,000,000.

(4) CONTRACTOR's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed below.

a. The CONTRACTOR shall add LCOG and its directors, officers, representatives, agents, and employees as additional insureds with respect to work or operations connected with the contract (excluding Workers' Compensation policies).

(5) Waiver of Subrogation. CONTRACTOR and LCOG waive all rights against the following:

a. Each other and any of their CONTRACTORS, agents, and employees, each of the other; and

b. LCOG, separate CONTRACTORS, and any of their CONTRACTORS, subcontractors, agents, and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Contract or other property insurance applicable to the work, except such rights as they may have to proceeds of such insurance held by the LCOG as fiduciary.

CONTRACTOR shall require their agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies, except for Workers' Compensation, shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

(6) Special Provisions.

a. If CONTRACTOR fails to procure and maintain such insurance, CONTRACTOR will be in breach of the Contract and LCOG shall have the right to proceed with Termination of the Contract and whatever judicial remedies may be appropriate.

b. Maintenance of the foregoing insurance coverage shall in no way be interpreted as relieving the CONTRACTOR of any responsibility hereunder. The CONTRACTOR may secure, at its own expense, such additional insurance as the CONTRACTOR deems necessary.

c. Insurance coverage carried by the CONTRACTOR shall not be subject to limitations, conditions, or restrictions reasonably deemed by LCOG to be inconsistent with the intent of the Insurance Requirements to be fulfilled by CONTRACTOR under this Article.

d. All policies are to be written through companies duly entered and authorized to transact that class of insurance in the state in which the project is located. The

insurance companies must have an A.M. Best rating of A:XI or better in most recent Best's Key Rating Guide.

- e. Approval, disapproval, or failure to act by LCOG regarding insurance supplied by the CONTRACTOR shall not relieve the CONTRACTOR of full responsibility or liability pursuant to Article 16 for damages. Neither shall be the bankruptcy, insolvency or denial or liability by the insurance company exonerate the CONTRACTOR from liability.
- f. Separations of Insureds. If the liability policies do not contain the standard ISO separation of insured provision, or a substantially similar clause, they shall be endorsed to provide a Separation of Insureds provisions.
- g. CONTRACTOR shall make no request for special payments for any insurance that the CONTRACTOR may be required to carry as identified under this Article; all are included in the Contract price and in the Contract unit prices.
- h. LCOG shall have the right, but not the obligation, of prohibiting CONTRACTOR or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by LCOG.
- i. Contractor and Subcontractors. CONTRACTOR shall require all of its subcontractors to provide the aforementioned coverage at levels that the CONTRACTOR and its subcontractors may consider necessary and any deficiency in the coverage or policy limits of the subcontractors will be the sole responsibility of CONTRACTOR. CONTRACTOR shall furnish copies of certificates of insurance evidencing coverage for each subcontractor when required by LCOG.
- j. Deductibles and Self-Insured Retention. All deductibles and/or self-insured retention amounts must be declared to LCOG.
- k. Certificates of Insurance. Before commencing performance on the Contract, CONTRACTOR must furnish certificate(s) of insurance (using ACORD form or equivalent) to LCOG evidencing the following:
  - i. Insurance coverage in accordance with this Article 17 – Insurance
  - ii. Signature by person authorized by insurer to bind coverage on its behalf
  - iii. Effective expiration dates of policies
  - iv. LCOG must be given thirty (30) days written notice, in accordance with policy terms, or all cancellation, non-renewal, or material changes in policy by either Insurer or CONTRACTOR.
  - v. LCOG is added as Additional Insured party on the Commercial General Liability.
  - vi. A waiver of subrogation endorsement applies on the General Liability.
  - vii. Any deductible and/or self-insured retention

- viii. Certificate of Insurance title block format is as follows: Lane Council of Governments, 859 Willamette Street, Suite 500, Eugene OR 97405.

Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of the Contract.

## **ARTICLE 18 – PERFORMANCE BOND**

(Intentionally Omitted)

## **ARTICLE 19 – SUBLETTING, ASSIGNMENT, OR TRANSFER**

The Contractor remains fully responsible for the performance of any and all subcontractors and shall not be relieved of any responsibility for the performance of its duties under the contract, regardless of any subcontract entered into by the Contractor. Subcontractors must comply with the same terms and conditions, provide the same assurances, and meet the same standards of service required of the Contractor.

## **ARTICLE 20 – TERMINATION**

- (1) Termination for Convenience. LCOG may terminate this Contract for its convenience at any time by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least 14 calendar days before the effective date of such termination. If this contract is terminated, LCOG shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by the Contractor which shall itemize each task element and briefly state what work has been completed and what work remains to be done. The Contractor shall promptly submit its termination claim to LCOG to be paid the Contractor. If the Contractor has any property in its possession belonging to LCOG, the Contractor will account for the same, and dispose of it in the manner LCOG directs.
- (2) Termination for Default. If the Contractor fails to perform in the manner called for in this Contract or if the Contractor fails to comply with any other provisions of this Contract, LCOG may terminate this Contract for cause. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor has breached or is in default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this Contract.

If this contract is terminated while the Contractor has possession of LCOG goods, the Contractor shall, upon direction of LCOG, protect and preserve the goods until surrendered to LCOG or its agent. The Contractor and LCOG shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Article 22 – Breaches and Dispute Resolution.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of LCOG.

- (3) Opportunity to Cure. LCOG in its sole discretion may, in the case of a termination for cause, allow the Contractor an appropriate period of time to cure the breach or default. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the Contractor fails to remedy to LCOG's satisfaction the breach or default, LCOG shall have the right to terminate this Contract without any further obligation to the Contractor. Any such termination for breach or default shall not in any way operate to preclude LCOG from also pursuing all available remedies against the Contractor and its sureties for said breach or default.
- (4) Waiver of Remedies for any Breach. In the event that LCOG elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by LCOG shall not limit LCOG's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

#### **ARTICLE 21 – APPLICABLE LAWS AND VENUE**

This Contract shall be governed by the laws of the State of Oregon. This Contract shall be deemed entered into in Lane County, Oregon. At LCOG's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in this county.

#### **ARTICLE 22 – CLAIMS AND DISPUTES**

- (1) Definition. A claim is a demand or assertion by one of the Parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "claim" also includes other disputes between LCOG and the Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.
- (2) Time Limits on Claims. Claims by Contractor must be made within 14 days after occurrence of the event giving rise to such claim or within 14 days after the claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is the later. An additional claim made after the initial claim has been resolved will not be considered unless submitted in a timely manner.
- (3) Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by LCOG or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure

to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

- (4) Continuing Contract Performance. Pending final resolution of a claim, including litigation, unless otherwise directed by LCOG in writing, the Contractor shall proceed diligently with performance of the Contract and LCOG shall continue to make payments in accordance with the Contract.
- (5) Waiver of Claims: Final Payment. The making and acceptance of Final Payment shall constitute a waiver of claims by LCOG except those arising from:
  - a. Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
  - b. Failure of the Work to comply with the requirements of the Contract;
  - c. Terms of special warranties required by the Contract; or
  - d. Faulty or defective work appearing after Final Completion.

### **ARTICLE 23 – RESOLUTION OF CLAIMS AND DISPUTES**

- (1) Negotiation. The parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Contract. If a controversy or claim should arise, LCOG's Contract Manager and Contractor's principal contact with LCOG (herein referred to as "Contractor's Field Representative") will meet at least once and will attempt in good faith to resolve the dispute. For such purpose, either may request the other to meet within five (5) days, at a mutually agreed upon time and place.

If LCOG's Contract Manager and Contractor's Field Representative are not able to resolve the dispute within three (3) days after their first meeting (or such longer period of time as may be mutually agreed upon), either party may request that LCOG and the Contractor's Management Representative meet at least once to attempt in good faith to resolve the dispute.

If LCOG and Contractor's Management Representative are not able to resolve the dispute within five (5) days after the first meeting of LCOG's Contract Manager and Contractor's Field Representative (or such longer period of time as may be mutually agreed upon), LCOG will notify the Contractor's Management Representative in writing that the LCOG's Executive Director shall render a decision within three (3) days, which decision shall be considered advisory only and not binding in the event of litigation in respect of the claim.

Upon expiration of such time period, the Executive Director will render to the parties LCOG's written decision relative to the claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, LCOG may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. Contractor shall, within five (5) days after the effective date of this Contract, designate to LCOG its Field Representative and Management Representative, the latter of whom shall be an executive level individual with authority to settle disputes. LCOG and Contractor may each change the designation

of its Field Representative and Management Representative, but shall maintain at all times during the term of this Contract both a designated Field Representative and a designated Management Representative.

- (2) **Mediation.** If the dispute has not been resolved within fifteen (15) days after the first meeting of LCOG’s Contract Manager and Contractor’s Field Representative (or such longer period of time as may be mutually agreed upon), either party may refer the claim or controversy to non-binding mediation by sending a written mediation request to the other party. In the event that such a request is made, the parties agree to participate in the mediation process. Non-binding mediation of claims or controversies under this Contract shall be conducted by a professional mediator that is mutually acceptable to and agreed upon by both parties (herein referred to as the “Mediator”). The parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator be unable or unwilling to continue to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.
- (3) **Litigation.** If the dispute is not resolved within fifteen (15) days after the commencement of mediation, or if no mediation has been commenced within thirty (30) days after the first meeting between LCOG’s Contract Manager and Contractor’s Field Representative (or such longer period of time as may be mutually agreed upon), either party may commence litigation to resolve the dispute in any Oregon state court of competent jurisdiction in Lane County or in the United States District Court for the State of Oregon to the extent said Court shall have jurisdiction over the matter.
- (4) In addition to the requirements of Article 27 in this Contract entitled “Notices”, a copy of any written notices, appeals, and documents pertaining to a contract dispute under this Article shall also be delivered to Anne Davies, LCOG’s Principal Attorney and Brendalee Wilson, LCOG’s Executive Director.
- (5) Contractor agrees that the economic loss rule shall not serve as a limitation on LCOG’s right to pursue tort remedies in addition to other remedies it may have against Contractor. Such rights and remedies shall survive the project or any termination of this Contract.
- a. **Oregon Torts Limits (Effective as of July 1, 2016).** Below are the most recently published tort limits based on required statutory methodology identified in Oregon Revised Statute 30.271(4), 30.272(4), and 30.273(3) to calculate the annual adjustment to the limitations on liability of state and local public bodies for personal injury, death, and property damage or destruction. Based on these calculations, the limitations are adjusted as shown in this table:

Public Body	Claimant(s)	Claim	Adjusted Limit
State	Single	Injury or death	\$ 2,418,100

State	Multiple	Injury or death	\$ 4,836,200
Local	Single	Injury or death	\$ 806,100
Local	Multiple	Injury or death	\$ 1,612,000
State or Local	Single	Property damage or destruction	\$ 132,200
State or Local	Multiple	Property damage or destruction	\$ 661,000

### ARTICLE 24 – FORCE MAJEURE

- (1) Neither party hereto shall be deemed to be in default of any provision of this Contract, or for any failure in performance, resulting from acts or events beyond the reasonable control of such party. For purposes of this Contract, such acts shall include, but not be limited to, acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, or other "force majeure" events beyond the parties' reasonable control; provided, however, that the provisions of this Section shall not preclude LCOG from canceling or terminating this Contract (or any order for any product included herein), as otherwise permitted hereunder, regardless of any force majeure event occurring to Contractor.
- (2) Notification by Contractor. Contractor shall notify LCOG in writing as soon as Contractor knows, or should reasonably know, that a force majeure event (as defined in the Contract Documents) has occurred that will delay completion of the Scope of Work. Said notification shall include reasonable proofs required by LCOG to evaluate any Contractor request for relief under the Contract Documents. LCOG shall examine Contractor's notification and determine if the Contractor is entitled to relief. LCOG shall notify the Contractor of its decision in writing. LCOG's decision regarding whether or not the Contractor is entitled to force majeure relief shall be final and binding on the parties.
- (3) Losses. Contractor is not entitled to damages, compensation, or reimbursement from LCOG for losses resulting from any "force majeure" event.

### ARTICLE 25 – SEVERABILITY

If any provision of this Contract is held to be invalid, illegal, or unenforceable for any reason, the validity, legality, and enforceability of the remaining provisions of this Contract will not be adversely affected.

### ARTICLE 26 – ASSIGNABILITY

The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

### ARTICLE 27 – NOTICES

- (1) All official notices and communications under this Contract shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered personally to the party to whom notice is given, or (ii) at the date of actual receipt if mailed by U.S. Postal Service, postage prepaid, return receipt requested.
- (2) Notices and other communications shall be directed to the parties at the addresses listed below:

**Notice to Contractor:**

Successful Proposer  
123 Main Street  
Anywhere, US 0000  
Attn: [maincontact@proposer.com](mailto:maincontact@proposer.com)

**Notice to LCOG:**

Lane Council of Governments  
859 Willamette Street  
Eugene, OR 97401  
Attn: Kelly Clarke  
Copy: Brendalee Wilson, Executive  
Director

Telephonic and electronic mail communications and facsimile transmittals may be used to expedite communications, but neither shall be considered official communications under this Contract unless and until confirmed in writing in accordance with this Article 22, paragraph (1) above.

Either party may change its representation or address by notice given to the other in accordance with this Article.

**ARTICLE 28 – OWNERSHIP OF DOCUMENTS**

The Contractor agrees that all reports, drawings, computer disks, specifications, survey notes, estimates, maps, computations, and other data prepared by or for it under the terms of this Contract shall be delivered to, become, and remain the property of LCOG upon termination or completion of the work. LCOG shall have the right, at its sole risk, to use the same without restriction or limitation and without compensation to the Contractor other than that provided for in this Contract. In the event of reuse by LCOG, LCOG shall indemnify, defend and hold harmless Contractor from any and all claims or demands arising from such reuse by LCOG. The Contractor shall not have the right to use same for sale or other benefit without express written permission from LCOG, which permission shall not be unreasonably withheld. Contractor shall be allowed to retain a copy of the same for its records and as may be required by law.

**ARTICLE 29 – RIGHTS IN TECHNICAL DATA**

- (1) All documents and materials prepared or developed by Contractor and its subcontractor pursuant to this Contract will become the property of LCOG without restriction or limitation on their use and will be made available upon request, to LCOG at any time. Original copies of such will be delivered to LCOG upon completion or termination of the Services. Contractor will be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication or dissemination of this material is subject to the prior written approval of LCOG.



- (2) No material or technical data prepared by Contractor under this Contract is to be released by Contractor to any other person or agency except as necessary for the performance of the Services.
- (3) LCOG will have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so.
- (4) Contractor grants LCOG and its subsidiaries, officers, agents, representatives and employees, acting within the scope of their official duties, a royalty-free, perpetual license to publish, translate, reproduce, deliver and use as they deem fit all technical data covered by copyright supplied for this Contract. No copyrighted matter will be included in technical data furnished hereunder without the written permission of the copyright owner for LCOG to use such in the manner herein described.
- (5) Contractor warrants that the processes, design, equipment, materials or devices used in providing the Services will be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against LCOG, Contractor will, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by LCOG, and indemnify and hold harmless LCOG, its subsidiaries, officers, agents, representatives and employees from all liability, costs and expenses associated therewith, including, without limitation, defense costs and attorneys' fees.

### **ARTICLE 30 – COPYRIGHTING**

The Contractor and LCOG agree that any papers, interim reports, forms, and any other material which are part of the Work under this Contract are to be deemed a “work for hire,” as such term is defined in the Copyright Laws of the United States. As a “work made for hire,” all copyright interests in said works will vest in LCOG upon creation of the copyrightable work. If any papers, interim reports, forms, or other material which are a part of work under this Contract are deemed by law not to be a “work for hire,” any copyright interests of the Contractor are hereby assigned completely and solely to LCOG. Publication rights to any works produced under this Contract are reserved by LCOG.

### **ARTICLE 31 – PUBLICATION AND PUBLICITY**

Articles, papers, bulletins, data, studies, statistics, interim or final reports, oral transmittals, or any other materials reporting the plans, progress, analyses, results, or findings of work conducted under this Contract shall not be presented publicly or published without prior written approval by LCOG.

All releases of information, findings, and recommendations shall include a disclaimer provision and all published reports shall include that disclaimer on the cover and title page in the following form:

*"The contents of this publication reflect the views of the author(s), who is (are) responsible for the facts and accuracy of the data presented herein. The opinions, findings, and conclusions in this publication are those of the author(s) and do not necessarily reflect the official views or policies of those of the Lane Council of Governments or the Federal Transit Administration. This publication does not constitute a standard, specification, or regulation."*

If any information concerning the Services, their conduct, results, or data gathered or processed should be released by the Contractor without prior approval from LCOG, the release of same shall constitute grounds for termination of this Contract without indemnity to the Contractor. In addition, the Contractor shall indemnify and hold harmless LCOG, its officers, employees, and agents from any liability arising from such unauthorized release of data.

Any request for information directed to the Contractor, pursuant to the Oregon Open Records Act, by the public shall be immediately redirected to LCOG for handling. LCOG shall be responsible for providing the response to requests under the Oregon Open Records Act. The Contractor acknowledges and agrees that all records of the Services and the work, including records of the Contractor and its subcontractors are subject to the Oregon Open Records Act.

#### **ARTICLE 32 – COVENANT AGAINST CONTINGENT FEES**

The Contractor shall comply with all relevant requirements of all Federal, State, and local laws. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, LCOG shall have the right to annul this Contract without liability, or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### **ARTICLE 33 – CONFLICTS OF INTEREST**

LCOG employees and directors are bound by the LCOG Code of Ethics and Standards of Conduct. The LCOG Code of Ethics and Standards of Conduct prohibits LCOG employees and directors engaged in the award and administration of contracts, or any person acting on their behalf, from accepting, directly or indirectly, any gift with a value of more than a nominal amount, including meals or tickets to sporting events, from any person with whom the employee interacts on official LCOG business. Therefore, Contractor, or its subcontractors or suppliers, may not make gifts or favors to any LCOG employee or director. It is a violation of the LCOG Code of Ethics and Standards of Conduct for any LCOG employee to accept any such gift or favor.

#### **ARTICLE 34 – WARRANTIES**

The Contractor shall exercise in its performance of the Services the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services.

Contractor further warrants and agrees that it, and any persons assigned by Contractor, shall perform this Contract in compliance with all relevant requirements of federal, state, and local laws, statutes, acts, ordinances, rules, regulations, codes, or standards.

#### **ARTICLE 35 – NONWAIVER**

No failure or waiver or successive failures or waivers on the part of either Party, its successors or permitted assigns, in the enforcement of any condition, covenants, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either Party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other Party hereto, its successors or permitted assigns.

#### **ARTICLE 36 – MERGER**

This Contract constitutes the entire agreement of the Parties, all prior discussions, representations, and agreements being merged herein. The Contract may not be changed, modified, extended, or amended, nor any provision thereof waived, except by a written amendment executed by duly authorized representatives of the respective parties. The captions in this Contract are for convenience only and shall not affect the substantive meaning of any provision herein.

#### **ARTICLE 37 – NO THIRD-PARTY RIGHTS**

Except as expressly set forth herein, the representations, warranties, terms, and provisions of this Contract are for the exclusive benefit of the Parties hereto and no other person or entity shall have any right or claim against either Party by reason of any of these terms and provisions or be entitled to enforce any of these terms and provisions against either Party.

#### **ARTICLE 38 – ATTACHMENTS**

Any attachment or exhibit to this Contract will be incorporated into and made a part of this Contract. In the event of a conflict between the provisions contained in the body of this Contract and any attachment or exhibit, the terms in the body of this Contract will control.

#### **ARTICLE 39 – SEPARATE COUNTERPARTS**

This Contract may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

#### **ARTICLE 40 – FOREIGN CONTRACTOR REPORT TO DEPARTMENT OF REVENUE (ORS 279A.120)**

The following provision is applicable to all contracts with a contract price exceeding \$10,000 if the Contractor is not domiciled in or registered to do business in the state of Oregon:

Where a public contract is awarded to a foreign Contractor and the contract price exceeds \$10,000, the Contractor shall promptly report to the Department of Revenue, on forms provided by the Department of Revenue, the total contract price, terms of payment, length of contract, and such other information as the Department of Revenue may require. The Contractor shall provide LCOG with copies of all forms provided to the Department of Revenue before final payment will be made on the contract.

#### **ARTICLE 41 – REGULATORY COMPLIANCE**

The work to be performed as the Services under this Contract may be financed, in part, by grants provided under programs of the Federal Transit Act, as amended, and as such is subject to the Terms and Conditions set forth in the grant agreements. Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to the Contract may be modified from time to time. Contractor acknowledges that the most recent of such Federal requirements will govern the Contract at any particular time, unless the Federal Government determines otherwise. Likewise, new Federal laws, regulations, policies, and administrative practices may be established after the Contract is executed and may apply to the Contract. The laws and regulations detailed in this Contract include, but are not limited to, those that will be applicable to the Contract. To the extent applicable, Contractor shall comply with the Federal, State, and LCOG imposed requirements contained in this Contract.

#### **ARTICLE 42 – CONFIDENTIAL INFORMATION**

Access to government records is governed by the Oregon Open Records Act, ORS 192.440. Except as otherwise required by the Oregon Open Records Act, LCOG will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted or disclosed during the term of the Contract. Any such proprietary information, trade secrets or confidential commercial and financial information that the Contractor believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such. Notwithstanding the Contractor's claim of or designation of information as proprietary, confidential or a trade secret, the determination whether it is or not will be determined by LCOG under Oregon state law.

Any request for information directed to the Contractor, pursuant to the Oregon Open Records Act, by the public shall be immediately redirected to LCOG for handling. LCOG shall be responsible for providing the response to requests under the Oregon Open Records Act. The Contractor acknowledges and agrees that all records of the Services and the work, including records of the Contractor and its subcontractors are subject to the Oregon Open Records Act, ORS 192.440, et. seq.

This Confidentiality section shall survive the termination or expiration of the Contract.

#### **ARTICLE 43 – OREGON RECIPROCAL PREFERENCE (ORS 279A.120)**

In determining the lowest responsible bidder, a public contracting agency shall, for the purpose of awarding the contract, add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.

The Oregon Department of Administrative Services, on or before January 1 of each year, shall publish a list of states that give preference to in-state bidders with the percent increase applied in each such state. The public contracting agency may rely on the names of states and percentages so published in determining the lowest responsible bidder without incurring any liability to any bidder.

#### **ARTICLE 44 – CONDITIONS CONCERNING PAYMENT, CONTRIBUTIONS, LIENS, WITHHOLDING (ORS 279B.220)**

Every public contract shall contain a condition that the contractor shall:

- (1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

#### **ARTICLE 45 – HOURS OF LABOR (ORS 279C.520)**

No person shall be employed for more than eight (8) hours in any one day or forty (40) hours in any one week except in cases of necessity, emergency, or when the public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday or any legal holiday specified in ORS 279C.540.

#### **ARTICLE 46 – RESERVED**

#### **ARTICLE 47 – CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The Contractor agrees to comply with the following, in accordance with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708) and U.S. Department of Labor regulations (29 C.F.R. part 5):

- (1) Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work that may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of eight (8) hours in any calendar day or in

excess of forty (40) hours in such work week, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such work week.

- (2) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (b) (1) of 29 CFR, Section 5.5, the Contractor or any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR, Section 5.5, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight (8) hours or in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) of 29 CFR, Section 5.5.
- (3) Withholding for Unpaid Wages and Liquidated Damages. The Department of Transportation (DOT) or LCOG shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR, Section 5.5.
- (4) Non-construction Grants. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, LCOG shall require the Procurement Manager to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of DOT and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.
- (5) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph 1 through 5 of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The

prime Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in subparagraphs 1 through 5 of this paragraph.

#### **ARTICLE 48 – CONTRACTOR’S COMPLIANCE WITH TAX LAWS**

- (1) Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, “tax laws” includes all the provisions described in the required **Contractor’s Representations and Warranties Certification**, included as part of this Contract.
- (2) Any violation of subsection 1 of this section shall constitute a material breach of this Contract. Further, any violation of the conditions specified in the **Contractor’s Representations and Warranties Certification**, concerning the Contractor’s compliance 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 LCOG to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:
  - a. Termination of this Contract, in whole or in part;
  - b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State’s setoff right, without penalty; and
  - c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. LCOG shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing [replacement Services/replacement Goods/a replacement contractor].

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

#### **ARTICLE 49 – RESERVED**

#### **ARTICLE 50 – NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

- (1) LCOG and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to LCOG, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause

shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**ARTICLE 51 – RESERVED**

**ARTICLE 52 – RESERVED**

**ARTICLE 53 – RESERVED**

**ARTICLE 54 – RESERVED**

**ARTICLE 55 - RESERVED**

**ARTICLE 56 – DRUG AND ALCOHOL TESTING AND USE CONTROL**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Oregon, or LCOG, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 and to submit the Management Information System (MIS) reports in a timely manner. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

**ARTICLE 57 – RESERVED**

**ARTICLE 58 – RESERVED**

**ARTICLE 59 – RESERVED**

**ARTICLE 60 – RESERVED**



## ARTICLE 61 – TITLE VI

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest agrees as follows:

- (1) Compliance with Regulations. The Contractor shall comply with the regulations relative to non-discrimination in federally assisted programs of the United States Department of Transportation (“DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (the “Regulations”), which are herein incorporated by reference and made a part of this Contract.
- (2) Non-discrimination. The Contractor, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontracts, including procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for Work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this Contract and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- (4) Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by LCOG or the Federal Transit Administration (“FTA”) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to LCOG, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance. In the event of the Contractor’s non-compliance with non-discrimination provision of this Contract, LCOG shall impose contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:
  - (a) Withholding of payments to the Contractor under the Contract until the Contractor complies; and/or
  - (b) Cancellation, termination, or suspension of the Contract, in whole or in part.
- (6) Incorporation of Provisions. The Contractor shall include the provisions of paragraphs (1) through (6) of this Article in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as LCOG or the FTA may direct as a means of enforcing such provisions

including sanctions for non-compliance provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request LCOG enter into such litigation to protect the interests of LCOG, and, in addition, the Contractor may request the United States federal government to enter into such litigation to protect the interest of the United States.

**ARTICLE 62 – RESERVED**

**ARTICLE 63 – RESERVED**

**ARTICLE 64 - PUBLIC TRANSPORTATION EMPLOYEE  
PROTECTIVE ARRANGEMENTS**

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

**SAFE OPERATION OF MOTOR VEHICLES**

In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third-party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

**Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles,

company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or AGENCY.

#### Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

#### **ARTICLE 65 – RESERVED**

#### **ARTICLE 66 – RESERVED**

#### **ARTICLE 67 – RESERVED**

#### **ARTICLE 68 – RESERVED**

#### **ARTICLE 69 – AMERICANS WITH DISABILITIES ACT (ADA)**

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 C.F.R. Part 27; and any implementing requirements FTA may issue. These regulations provide that no individual with disabilities, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112 and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor agrees that it will comply with the requirements of U.S. Department of Transportation regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37; and U.S. Department of Transportation regulations, “Americans with Disabilities Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38, pertaining to facilities and equipment to be used in public transportation. In addition, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (b)(6), which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. Contractor also agrees to comply with any implementing requirements FTA may issue.

In addition to the above, the Contractor agrees to comply with the following federal prohibitions against discrimination on the basis of disability:

1. Federal laws, including:

- a. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities,
- b. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
- c. Other applicable federal laws, regulations and requirements pertaining to access for seniors or individuals with disabilities.

2. Federal regulations, including:

- a. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. Part 39,
- b. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35,
- c. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36,
- d. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630,
- e. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. Part 64, Subpart F,
- f. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194, and
- g. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609, and
- h. Other applicable federal civil rights and nondiscrimination guidance.

Contractor understands that it is required to include this article in all subcontracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate.

**ARTICLE 70 – COMPLIANCE WITH ALL FEDERAL, STATE,  
AND LOCAL REGULATIONS**

The Contractor must comply with all federal, state, and local regulations relative to wages, taxes, social security, workers' compensation, nondiscrimination, licenses, registration requirements, etc. Failure or neglect on the part of the Contractor to comply with any or all such regulations shall not relieve the Contractor of these obligations nor of the requirements of this contract.

Upon request of LCOG, Contractor shall provide evidence of the steps it has taken to ensure its compliance with federal, state, local regulations, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of subcontractor's compliance, at all tiers.

The Contractor also agrees to include a substantially similar provision in its contracts with subcontractors.

**ARTICLE 71 – RESERVED**

*(Signature page to follow)*

SAMPLE CONTRACT

**IN WITNESS WHEREOF**, said Parties have hereunto set their hand and affixed their seals the day and year above first written.

**SUCCESSFUL PROPOSER**

**LANE COUNCIL OF GOVERNMENTS**

By:

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By:

---

Name  
Title

Brendalee Wilson  
Executive Director

**Address:**  
123 Main Street  
Anywhere, USA 00000

**Address:**  
859 Willamette Street, Suite 500  
Eugene, Oregon 97401

**E-mail:**

SAMPLE CONTRACT

**EXHIBIT A  
SCOPE OF WORK**

**EXHIBIT B  
COMPENSATION AND METHOD OF PAYMENT**

SAMPLE CONTRACT

**EXHIBIT C**  
**LCOG REQUEST FOR PROPOSALS NO. 2022-0002, FULLY CONFORMED AND**  
**INCLUSIVE OF ALL ADDENDA TO THE RFP (BY REFERENCE)**

SAMPLE CONTRACT



**EXHIBIT D  
CONTRACTOR'S PROPOSAL IN RESPONSE**

SAMPLE CONTRACT

SAMPLE CONTRACT