



MASTER PROFESSIONAL SERVICES AGREEMENT
Summary of Terms

A. CLIENT NAME:	Grant County Digital Network Coalition (GCDNC)
Address:	450 East Main Street, John Day, Oregon 97845
B. PROJECT NAME:	Communications Infrastructure Design & Technical Consulting Services
C. CONSULTANT NAME:	Commstructure Consulting, LLC
Office Address:	811 Railroad Avenue, Oregon City, OR 97045
Project Number:	Various Projects – <i>(Refer to specific work order)</i>
D. EXECUTION DATE:	
<small>(date of latest signature by parties)</small>	
E. TERM:	The Term of the Agreement shall automatically renew for successive one (1) year terms from the executed date of this Agreement unless terminated in accordance with Section 5 or modified by Amendment.

F. COMPENSATION (check one): <i>(See specific Work order for Scope and Compensation):</i>	[See Section 2.1 of the Terms and Conditions for Description; See Exhibit A for Standard Hourly Rates & Specific Work Order for Total Compensation]		
<input type="checkbox"/> Lump Sum	Lump Sum Amount:	\$	
<input type="checkbox"/> Negotiated Billing Rates Hourly Time & Expense (T&E)	Total Compensation Amount:	\$	
<input type="checkbox"/> Salary Multiplier:	Total Compensation Amount:	\$	
<input type="checkbox"/> Other:	Total Compensation Amount:	\$	

G. NOTICES:	
If to Grant County Digital Network Coalition:	If to Commstructure Consulting, LLC:
Address: 450 East Main Street John Day, Oregon 97845	Address: 811 Railroad Avenue Oregon City, OR 97045
_____	_____
Attention: Nicholas Green <small>(name of designated client representative)</small>	Attention: Erik Orton <small>(name of Commstructure signatory)</small>
Phone: 541-575-0028	Phone: 971-266-4440
E-mail: greenn@grantcounty-or.gov	E-mail: erik@commstructureconsulting.com

MASTER PROFESSIONAL SERVICES AGREEMENT

Terms and Conditions

This Master Professional Services Agreement (“**Agreement**”) is entered into by and between Commstructure Consulting, LLC (CCLLC) and Grant County Digital Network Coalition (“**Client**”) as of the Execution Date referred to in the Summary of Terms (page 1 of this Agreement). (CCLLC and Client are each referred to herein as a “**Party**” and collectively as the “**Parties**.”) The Summary of Terms shall be incorporated with this Agreement by reference:

1. Authorization to Proceed

Unless otherwise provided in this Agreement, execution of this Agreement by Client will be authorization for Commstructure to proceed with the services outlined in subsequent individual Scope of Work documents (the “**Services**”) according to the Standard Hourly Rates in Exhibit A on a Time and Expense (T&E) basis. Individual Work Orders will be developed for specific projects. Client acknowledges and agrees that Commstructure will be providing the Services and the Work Deliverables (as defined in Section 12) specifically for and solely with respect to the Project and that attempts to reuse the Work Deliverables outside the context of the Project may cause substantial damage. Therefore, Client covenants and agrees that it shall not use the Work Deliverables, and shall not permit the Work Deliverables to be used, other than with respect to the Project, unless it has received the specific written approval of Commstructure.

2. Compensation

2.1 Commstructure's compensation under this Agreement shall be as set forth in the Summary of Terms and may be based on any one of the following:

- (a) Lump Sum. Under this compensation structure, Commstructure charges Client a fixed lump sum amount for the Services to be performed for the Project; Commstructure shall be responsible for all wages or salaries of its employees and costs of subconsultants. The lump sum amount shall include all Direct Labor costs and Expenses, Indirect costs (overhead), and Profit.
- (b) Negotiated Billing Rates. Under this compensation structure, Commstructure charges Client on the basis of negotiated (hourly, daily, etc.) rates for work performed on Client's Project by Commstructure employees of the indicated classifications. These rates are subject to annual calendar year adjustments and include all allowances for salary, overhead, and profit. Total Compensation is the maximum amount payable for the defined services, including indirect costs as identified under paragraph 2.2.
- (c) Salary Multiplier. Under this compensation structure, Commstructure charges Client rates equal to the direct wages or salaries Commstructure pays to its employees for work performed directly on the Project, multiplied by a negotiated multiplier as shown in Section F of the Summary of Terms to cover payroll-related taxes, payments, premiums, benefits, and other indirect costs, plus overhead and profit. Total Compensation is the maximum amount payable for the defined services, including indirect costs as identified under paragraph 2.2.

2.2 In addition to any of the fee structures set forth above in 2.1(b) and (c), Commstructure may charge Client for Direct Expenses. Direct Expenses include those costs incurred on or directly for the Project, including, but not limited to, necessary transportation costs, including current rates for Commstructure vehicles; meals and lodging; laboratory tests and analyses; computer services; word processing services; telephone; printing, binding, and reproduction charges; all costs associated with outside consultants, and other outside services and facilities; and other similar costs. Reimbursement for Direct Expenses will be on the basis of actual charges when furnished by commercial sources and on the basis of current rates when furnished by Commstructure. In either case, a service processing charge of 10 percent (10%) will be added to Direct Expenses.

3. Payment to Commstructure

Commstructure will issue monthly invoices for the compensation due as a result of services provided under this Agreement to that time, less services previously billed. Invoices are due and payable on receipt. In the event that any portion of an invoice is disputed, payment will be made for the non-disputed amounts. Commstructure will charge interest at the rate of 1½ percent per month, or the maximum permitted by law if less, on all past-due amounts starting 30 days after date of invoice. Commstructure will credit payments first to interest and then to principal.

4. Standard of Care

Commstructure shall perform the Services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Commstructure makes no warranties, express or implied, under this Agreement or otherwise, in connection with the Services.

5. Term and Termination

- 5.1 Term. The term of the Agreement shall be as set forth in the Summary of Terms. If a term is not specified in the Summary of Terms, Commstructure's obligation to render the Services under this Agreement will be for a period that may reasonably be required for the completion of the Services.
- 5.2 Termination For Cause. This Agreement may be terminated by (a) either Party if 1) the other Party fails to perform substantially in accordance with this Agreement through no fault of the other Party and does not commence correction of such failure within ten (10) days after written notice thereof and diligently completes the correction promptly thereafter, or 2) the performance of the Services pursuant to this

Agreement are delayed or suspended for more than ninety (90) days for reasons beyond Commstructure's control; (b) Commstructure, upon seven (7) days' written notice if Commstructure believes that Client is requesting it to furnish or perform services contrary to Commstructure's responsibilities as a professional.

5.3 For Convenience. Either Party may terminate this Agreement for any reason, or for no reason, upon thirty (30) days' written notice to the non-terminating Party.

5.4 Payment Upon Termination. On termination, Client shall pay Commstructure for all authorized work performed up to the termination date plus termination expenses, including, but not limited to, costs related to the reassignment of personnel, subcontract termination costs, and related closeout costs.

6. Cost Opinions

Any cost opinions or economic evaluations provided by Commstructure will be on a basis of experience and judgment, but, since Commstructure has no control over market conditions, including cost of labor, materials, equipment, or services furnished by others, or bidding procedures, Commstructure does not warrant that bids, ultimate construction cost, or Project economics will not vary from these opinions. Client waives any claim for the accuracy or inaccuracy of such opinions.

7. Limitation of Liability

Except as otherwise provided in Section 9 of this Agreement and except with respect to breaches by Client of its covenants in Section 1 of this Agreement, but notwithstanding any other provisions of this Agreement, each Party's cumulative liability to the other Party for all claims, losses, damages, and expenses resulting in any way from the performance of this Agreement will not exceed the compensation received by Commstructure under this Agreement.

8. Indemnification

8.1 By Commstructure. Subject to Section 7, Commstructure shall indemnify and hold harmless Client, Client's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by breaches of this Agreement by Commstructure or its officers, directors, employees, and consultants.

8.2 By Client. Subject to Section 7, Client shall indemnify and hold harmless Commstructure, Commstructure's officers, directors, partners, employees, and any individuals or entities that have a contract with Commstructure to furnish services with respect to the Project from and against any and all costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by breaches of this Agreement by Client or its officers, directors, employees, and consultants.

9. Hazardous Substances

9.1 Client has disclosed to Commstructure all data available to Client concerning the known or

suspected presence of chemicals and/or chemical categories, as defined by the most current listing, 40 CFR 372 Subpart D – Specific Toxic Chemical Listings, at the Project site, including radioactive materials (a "Hazardous Substance") in connection with the Services or has represented to Commstructure that, to the best of Client's knowledge after due inquiry, Hazardous Substances do not exist at or near the Project site.

9.2 Notwithstanding any other provision contained in this Agreement and to the maximum extent permitted by law, Client shall indemnify and defend Commstructure and its officers, employees, subconsultants, and agents from all claims, damages, losses, and expenses, including, but not limited to, direct, indirect, or consequential damages and attorneys' fees arising out of or relating to the presence, discharge, release, or escape of Hazardous Substances on or from the Project site.

10. Insurance

Commstructure shall maintain public liability and property damage insurance that shall protect Commstructure from personal injury or property damage claims arising from its negligent acts or omissions in the performance of the Services under this Agreement. The limits of liability for such insurance shall be at least \$1,000,000 combined single limit.

11. Confidentiality

11.1 Definition of Confidential Information. "Confidential Information" means all nonpublic information, in whatever form (including without limitation orally disclosed information), that either Party to this Agreement (each a "Disclosing Party") designates as confidential at the time of disclosure to the Party that receives such information (each a "Receiving Party") or that, based on the nature of the information or circumstances surrounding its disclosure by or on behalf of Disclosing Party, Receiving Party should in good faith treat as confidential. Confidential Information includes without limitation, practices, procedures, specifications, drawings, sketches, models, samples, data, plans, computer programs, records, documentation, or other technical or business information. Except as otherwise indicated, the term "Receiving Party" also includes all affiliates of the Receiving Party. If information is disclosed in intangible form without being designated as confidential, Disclosing Party may still designate it as confidential by providing Receiving Party with written notice stating that designation and providing Receiving Party with a written summary of the confidential information, within twenty (20) days of initial disclosure.

11.2 Exclusion. Confidential Information does not include information that Receiving Party can document: (a) was generally known to the public at the time it was disclosed by Disclosing Party; (b) became generally known to the public other than through a breach of this Agreement by Receiving Party after the time of disclosure to Receiving Party by Disclosing Party; or (c) was independently developed by Receiving Party without reference to or use of Confidential Information.

11.3 Receiving Party Obligations. Receiving Party will not use or disclose any Confidential Information except in furtherance of the parties' mutually agreed business

relationship. Receiving Party will not disclose, give access to, or distribute any Confidential Information to any third party, except upon Disclosing Party's prior, written authorization. Receiving Party will take reasonable security precautions to keep Confidential Information confidential, which precautions shall be at least as protective as the precautions Receiving Party takes to preserve its own Confidential Information of a similar nature.

12. Ownership

12.1 Work Deliverables. "Work Deliverables" shall mean the final plans, designs, reports, and/or other documents prepared by Commstructure for delivery or presentation to Client as called for in the Scope of Work of subsequent Work Orders. All Work Deliverables produced by Commstructure for or at the direction of Client hereunder shall be the property of Client and, to the extent subject to copyright protection, shall be deemed "work for hire" as such term is defined under U.S. copyright law; provided, however that (a) Commstructure may retain copies of all such Work Deliverables in accordance with Section 14 of this Agreement, and (b) Client irrevocably grants Commstructure a world-wide, perpetual, non-exclusive license to use, reproduce, create derivative works from, and distribute or have distributed to or by third parties, the Work Deliverables.

12.2 Project Documents. All Project Documents shall be the sole property of Commstructure. "Project Documents" shall mean all studies, reports, evaluations, designs, drawings, procedures, field data, notes, specifications, plans, and all other documentation, including all documents on electronic media that are produced or acquired by Commstructure for or at the direction of Client pursuant to this Agreement, other than Work Deliverables.

13. Electronic Files and Data

Subject to the provisions of Section 11, Commstructure will provide certain information, including drawings and other electronic format data files, to Client for Client's use and reference. However, Commstructure is neither accountable nor responsible for the validity of data contained on electronic files once surrendered to Client. Commstructure does not warrant the accuracy of the content as contained in the electronic file(s) against computer viruses, unauthorized revisions to the files, or any other alterations or data destruction to the file(s). Commstructure shall not have any liability for Client use of any electronic form file(s) or its content, including without limitation, any transmittal of bugs, viruses, or other destructive or harmful programs, scripts, applets, or files to the computers or networks of Client. Commstructure's preparation of a transfer copy of electronic data will be made or completed through reproduction from the file retained and archived at the offices of Commstructure. Client acknowledges that the content of the transfer copy may not be an exact and virus-free copy of the master file. Client acknowledges and agrees that Client shall be solely responsible for inspection and testing of the electronic file(s) provided by Commstructure to verify the content is free from bugs, viruses, or other destructive or harmful programs, scripts, applets, or files, before accessing or using. The original files containing the information and data maintained at Commstructure shall be considered

Confidential Information under the terms of Section 11.

14. Document Retention

14.1 Work Deliverables. Work Deliverables are the property of Client and will be delivered to Client at Client's request. Notwithstanding the foregoing, Client acknowledges and agrees that unless Client specifically requests that such documents be delivered, all Work Deliverables left in Commstructure's possession after ten (10) years following the completion of the Project, regardless of whether this Agreement may still be in effect, may be retained or destroyed by Commstructure in its sole discretion.

14.2 Project Documents. All Project Documents may be retained or destroyed by Commstructure in its sole discretion.

15. Compliance with Laws

Commstructure will: (a) comply with federal, state and local laws, ordinances, regulations, and orders as in effect as of the Execution Date with respect to its performance of the Services pursuant to this Agreement, (b) file all required reports and pay all filing fees and federal, state, and local taxes applicable to Commstructure's business as the same shall become due, and (c) pay all amounts required under local, state, and federal workers' compensation acts, disability benefit acts, unemployment insurance acts, and other employee benefit acts when due.

16. Notice of Lien

16.1 If Client is the Owner. If Client is the owner of the property on which the Services are to be performed, by signing this Agreement, Client is on notice and acknowledges Commstructure's right to claim a lien against the improvement called for by this Agreement for the cost of the Services if Client fails to pay all sums owed to Commstructure under this Agreement.

16.2 If Client is not the Owner. If Client is not the owner of the property on which the Services are to be performed, Client shall put the owner on notice of Commstructure's right to claim a lien against the improvement called for by this Agreement for the cost of the Services.

17. Independent Contractor

Commstructure shall be deemed to be an independent contractor in the performance of this Agreement and shall not be considered or permitted to be an agent, servant, joint venturer, or partner of Client, its parent or affiliates, if any. All persons furnished, used, retained, or hired by or on behalf of Commstructure shall be considered to be solely the employees, personnel, or contractors of Commstructure, and Commstructure at all times shall maintain such supervision and control over its employees, personnel, and contractors as is necessary to preserve its independent contractor status. Commstructure shall be responsible for payment of any and all unemployment, social security, withholding, and other payroll taxes for its employees, as applicable, including any related assessments or contributions required by law.

18. Dispute Resolution

All disputes arising between the Parties relating to the making or performance of the Services shall be resolved in the following order of preference:

- (A) By good faith negotiation between representatives of Commstructure and Client who have authority to resolve the dispute fully and finally. The existence and substance of any negotiations pursuant to this Section shall be considered Confidential Information under this Agreement, shall be treated as compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and any comparable provision and shall not be used by any Party in any court, agency, or tribunal in any country for any reason.
- (B) In the event that the negotiations provided by Section 18(A) fail to resolve the dispute, the Parties shall endeavor to resolve the dispute by non-binding mediation under the Commercial Mediation rules of the American Arbitration Association (“AAA”) using a neutral mediator mutually acceptable to the Parties and with the costs therefore shared equally. All proceedings pursuant to this Section 18(B) shall be considered Confidential Information under this Agreement, shall be treated as compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and any comparable provision, and shall not be used by any Party in any court, agency, or tribunal in any country for any reason.
- (C) In the event that the mediation provided by Section 18(B) fails to resolve the dispute, the dispute shall be resolved pursuant to Section 19.1.
- (D) Notwithstanding anything to the contrary contained in this Section, the Parties reserve the right to seek equitable remedies with respect to the enforcement of any provision of this Agreement.

19. General Provisions

- 19.1 Governing Law; Venue; Attorneys’ Fees. This Agreement will be governed by the laws of the state of Oregon, excluding conflict of laws provisions. Exclusive jurisdiction and venue will lie with the state and federal courts sitting in Clackamas County, Oregon, and each of the parties hereby irrevocably consents to such jurisdiction. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the primarily prevailing Party will be entitled to recover its costs, including reasonable attorneys’ fees.
- 19.2 Notices. Any notice required under this Agreement shall be in writing, addressed to the appropriate Party at its address on the Summary of Terms, and given personally, or by registered or certified mail, postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt. The addresses, phone numbers, facsimile numbers, and email addresses for the Parties provided in the Summary of Terms may be changed by means of a written notice given to the other Party.

- 19.3 Assignment. Neither Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that either Party may assign this Agreement to an Affiliate without the other Party’s prior written consent. If such an attempted assignment occurs, the non-assigning Party will have the right to terminate this Agreement upon written notice to the assigning Party. This Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and assignees to the extent permitted by this Section. “**Affiliate**” means, with respect to any legally recognizable entity, any other such entity directly or indirectly controlling, controlled by, or under common control with such entity.
- 19.4 Third Party Beneficiaries. This Agreement gives no rights or benefits to anyone other than Client and Commstructure and has no third-party beneficiaries.
- 19.5 Survival. All express representations, covenants, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination (for any reason) for a period of three (3) years, provided, however, that the confidentiality provisions of Section 11 shall survive indefinitely.
- 19.6 Non-Waiver. No waiver of any provision of this Agreement will be effective unless it is in writing signed by an authorized executive of the waiving Party and labeled as a “**Waiver**,” and no such waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion. Non-enforcement of any provision of this Agreement by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- 19.7 Severability. If a court of competent jurisdiction holds any term, covenant, or restriction of this Agreement to be illegal, invalid, or unenforceable, in whole or in part, the remaining terms, covenants, and provisions will remain in full force and effect and will in no way be affected, impaired, or invalidated. If any provision in this Agreement is determined to be unenforceable in equity, then the court making that determination will have the power to reduce or limit such provision, and such provision will be then enforceable in equity in its reduced or limited form.
- 19.8 Headings. The headings used in this Agreement are inserted for convenience only and shall not be used in the interpretation or construction of the terms hereof.
- 19.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.
- 19.10 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications with respect to that subject matter.

20. Exhibits and Schedules

The following exhibits and schedules are hereby made a part of this Agreement:

- Exhibit A – Standard Hourly Rates
Time & Expense (T&E)

Signature Page – Master Professional Services Agreement

The Parties have caused this Agreement to be executed by their duly authorized representatives as of the Execution Date referred to in the Summary of Terms.

GRANT COUNTY DIGITAL NETWORK COALITION

COMMSTRUCTURE CONSULTING, LLC.

By: _____

By: _____

Name: Nicholas Green
(Please Print)

Name: Erik Orton
(Please Print)

Title: Executive Director

Title: CEO / President

Date: _____

Date: _____

Exhibit A – Standard Hourly Rates Time & Expense (T&E)

Standard Hourly Rates

<u>Unit #</u>	<u>Unit Description</u>	<u>Basis</u>	<u>* Rate</u>
CC109	Principal	Per Hour	\$ 130.00
CC110	Project Manager	Per Hour	\$ 115.00
CC111	Senior OSP Designer	Per Hour	\$ 105.00
CC112	OSP Designer	Per Hour	\$ 90.00
CC113	OSP Design Technician	Per Hour	\$ 75.00
CC114	Senior CAD Technician	Per Hour	\$ 85.00
CC115	CAD / GIS Technician	Per Hour	\$ 80.00
CC116	Office / Project Coordinator	Per Hour	\$ 80.00
CC117	Permit Coordinator	Per Hour	\$ 80.00
CC118	Owner Representative / Construction Oversight	Per Hour	\$ 90.00

* Rates are subject to an annual review and adjustment and the Professional Services Agreement shall be amended by written agreement by both parties

Travel Expense and Reimbursable Expenses

Standard Hourly Rates do not include provisions for travel expenses or other reimbursable direct expenses (i.e. sub-consultants, express mail, permit fees, large format color plotting, specialized base mapping data for specific communities, reprographics, binding, etc.) unless otherwise specified in project specific work orders or quotes.

Travel expenses including travel time, meals, lodging and miscellaneous expenses will be reimbursed at actual cost plus 10% for projects requiring travel beyond a 50-mile radius of the Commstructure home office.

All mileage incurred will be reimbursed per the current effective IRS reimbursement rate at the time driven.

Sub-consultants, reprographics, courier services and other reimbursable direct expenses shall be reimbursed at actual cost plus 10%.