

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") is made and entered into effective as of _____, 2022 (the "Effective Date"), between the City of John Day ("City") dba Grant County Digital Network Coalition ("Coalition"), an Oregon municipal corporation, whose address is 450 East Main Street, John Day, Oregon 97845, and _____ ("Contractor"), _____.

RECITALS:

A City is the recipient of certain federal grant funds from the Oregon Department of Administrative Services ("DAS") and Economic Development Administration ("EDA"). City's receipt of the EDA grant funds is subject to the terms and conditions of that certain grant agreement _____ between City and the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority (the "Grant Agreement"). Work to be performed under this Agreement will be funded in part with funds from the Grant Agreement.

B. Contractor will perform the Services (as defined below) for and on behalf of City in accordance with, and subject to, the terms and conditions contained in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the parties' mutual obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Grant Administration Services.

1.1 Services; Standards. Subject to the terms and conditions contained in this Agreement, Contractor will perform the following services for and on behalf of City (collectively, the "Services"): (a) those grant administration services identified on the attached Schedule 1.1; and (b) all other necessary or appropriate services customarily provided by Contractor in connection with its performance of those services identified in Schedule 1.1. Contractor will (w) consult with and advise City on all matters concerning the Services reasonably requested by City, (x) communicate all matters and information concerning the Services to City's city manager and report directly to the city manager, (y) devote such time and attention to the performance of the Services as City and Contractor deem necessary or appropriate, and (z) perform the Services to the best of Contractor's ability.

1.2 Schedule of Services. The Services will be completed expeditiously and in a timely manner. Notwithstanding anything contained in this Agreement to the contrary, all Services will be completed in accordance with the schedule contained in Schedule 1.2.

1.3 Conditions Precedent. Notwithstanding anything contained in this Agreement to the contrary, (a) City's performance of its obligations under this Agreement is conditioned on Contractor's performance of its obligations under this Agreement, including, without limitation, those Contractor obligations described under Section 4.4, and (b) this Agreement is made subject to the terms and conditions contained in the Grant Agreement.

2. Compensation.

2.1 Compensation. Subject to the terms and conditions contained in this Agreement, Contractor will perform the Services at the rate of \$_____ per hour. Within thirty (30) days after completing the Services, Contractor will submit an invoice to City concerning the completed Services (the "Invoice"). The Invoice will contain the following information: (a) a summary of the Services performed by Contractor (and by whom); (b) the number of hours (or fraction thereof) each person spent to perform the Services; and (c) any other information reasonably requested by City. City will pay the amount due under the Invoice within thirty (30) days after City has reviewed and approved the Invoice. No compensation will be paid by City for any portion of the Services not performed. City's payment will be accepted by Contractor as full compensation for performing the Services. Notwithstanding anything contained in this Agreement to the contrary, total compensation payable by City under this Agreement for the performance of the Services will not exceed \$_____ in accordance with the following: (y) total compensation for the Grant Administration Services identified under Task 1 of Schedules 1.1 will not exceed \$_____ ; and (z) total compensation for the Project Management Services identified under Task 2 of Schedule 1.1 will not exceed \$_____.

2.2 No Benefits; No Reimbursement; City Costs. City will not provide any benefits to Contractor, and Contractor will be solely responsible for obtaining Contractor's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Expenses incurred by Contractor in connection with the performance of the Services will not be reimbursed by City. City will be responsible for costs and expenses for publication and/or legal notices arising out of the Services, accounting and auditing costs associated with receiving and dispersing grant funds, and project closeout accounting costs.

3. Relationship.

3.1 Independent Contractor; Taxes; Licenses. Contractor is an independent contractor of City. Contractor is not an employee of City. Contractor will be free from direction and control over the means and manner of performing the Services, subject only to the right of City to specify the desired results. City will not withhold any taxes from any payments made to Contractor, and Contractor will be solely responsible for paying all taxes arising out of or resulting from Contractor's performance of the Services, including, without limitation, income, social security, workers' compensation, and employment insurance taxes. Contractor will be solely responsible for obtaining all licenses, approvals, and certificates necessary or appropriate to perform the Services.

3.2 No Agency Relationship. This Agreement does not create an agency relationship between City and Contractor and does not establish a joint venture or partnership between City and Contractor. Contractor does not have the authority to bind City or represent to any person that Contractor is an agent of City.

4. Representations; Warranties; Covenants.

In addition to any other Contractor representation, warranty, and/or covenant made in this Agreement, Contractor represents, warrants, and covenants to City as follows:

4.1 Authority; Binding Obligation; Conflicts. Contractor is duly organized, validly existing, and in good standing under applicable Oregon law. Contractor has full power and authority to sign and deliver

this Agreement and to perform all Contractor's obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms. The signing and delivery of this Agreement by Contractor and the performance by Contractor of all Contractor's obligations under this Agreement will not (a) breach any agreement to which Contractor is a party, or give any person the right to accelerate any obligation of Contractor, (b) violate any law, judgment, or order to which Contractor is subject, and/or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

4.2 Licenses; Quality of Services. Prior to Contractor's execution of this Agreement, Contractor obtained all licenses, approvals, and/or certificates necessary or appropriate to perform the Services. Contractor will perform the Services to the best of Contractor's ability, diligently, in good faith, in a professional manner, and consistent with the terms and conditions contained in this Agreement and the Grant Agreement. The Services will be performed in accordance with the Laws (as defined below). Contractor will be solely responsible for the Services. Contractor will make all decisions called for promptly and without unreasonable delay. All materials and documents prepared by Contractor will be accurate, complete, unambiguous, prepared properly, and in compliance with the Laws.

4.3 Insurance. During the term of this Agreement, Contractor will obtain and maintain, in addition to any other insurance Contractor is required to obtain under this Agreement, the following minimum levels of insurance: (a) general liability insurance for all losses or claims arising out of or related to Contractor's performance of this Agreement (including, without limitation, damages as a result of death or bodily injury to any person or destruction or damage to any property) with limits of not less than \$1,000,000 per occurrence, \$2,000,000.00 in the aggregate; (b) comprehensive automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Contractor in connection with Contractor's performance of the Services with limits of not less than \$500,000.00 per occurrence and in the aggregate; and (c) professional liability insurance with limits of not less than \$1,000,000.00 per occurrence, \$1,000,000.00 in the aggregate. Each insurance policy required under this Agreement will be in form and content satisfactory to City, will list City and its officers, employees, and agents as additional insureds, and will contain a severability of interest clause. Any insurance policy Contractor is required to obtain under this Agreement may not be cancelled without thirty (30) days' prior written notice to City. Contractor's insurance will be primary and any insurance carried by City will be excess and noncontributing. Within ten (10) days after Contractor's execution of this Agreement, Contractor will furnish City with certificates of insurance (and endorsements) evidencing the insurance coverage (and provisions) Contractor is required to obtain under this Agreement. If Contractor fails to maintain insurance as required under this Agreement, City will have the option, but will not have the obligation, to obtain such coverage with costs to be reimbursed by Contractor upon City's demand. If required under applicable law, Contractor will obtain and maintain workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law. Workers' compensation insurance will contain a waiver of subrogation in favor of City.

4.4 Compliance With Laws. Contractor will comply and perform the Services in accordance with the Laws. Without otherwise limiting the generality of the immediately preceding sentence, Contractor will comply with each obligation applicable to Contractor and/or this Agreement (a) under ORS 279B.220, 279B.225, 279B.230, and 279B.235, which statutes are incorporated herein by reference, and (b) arising out of those required federal contract clauses attached hereto as Exhibit A. The Services will be performed subject to and in accordance with all applicable requirements, including, without limitation, all applicable provisions and conditions of the Grant Agreement including any applicable federal provisions required by the OIFA. For purposes of this Agreement, the term "Law(s)" means all

applicable federal, state, and local laws, regulations, restrictions, orders, codes, rules, and/or ordinances related to or concerning, whether directly or indirectly, Contractor, the Grant Agreement, this Agreement, and/or the Services, including, without limitation, all applicable City ordinances, resolutions, policies, regulations, orders, restrictions, and guidelines, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

4.5 Indemnification. Contractor will defend, indemnify, and hold City, Coalition and each present and future City and Coalition employee, officer, agent, and representative (collectively, "City and Coalition's Representatives"), harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees, resulting from or arising out of, whether directly or indirectly, the following: (a) damage, injury, and/or death to person or property caused directly or indirectly by Contractor (and/or Contractor's shareholders, officers, agents, employees, directors, representatives, and/or contractors); (b) Contractor's failure to pay any tax arising out of or resulting from the performance of the Services; and/or (c) Contractor's breach and/or failure to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement. Contractor's indemnification obligations provided in this Section 4.5 will survive the termination of this Agreement.

4.6 Assignment of Studies and Reports. Contractor will assign all studies, reports, data, documents, and/or materials of any kind produced under this Agreement to City upon the earlier of City's request or the termination of this Agreement. All copies of the materials provided to City will become the property of City who may use them without Contractor's permission for any proper purpose relating to the Services, including, without limitation, additions to or completion of the Services. Upon written request by Contractor, City will grant Contractor a revocable license to use all studies, reports, data, documents, and/or materials of any kind produced under this Agreement. Contractor will defend all suits or claims for infringement of patent, trademark, and/or copyright for which Contractor is responsible (including, without limitation, any claims which may be brought against City), and Contractor will be liable to City for all losses arising therefrom, including costs, expenses, and attorney fees.

4.7 Records. Contractor will maintain complete and accurate records concerning all Services performed, the number of hours each person spent to perform the Services, and all documents produced under this Agreement for a period of five years after the termination of this Agreement. Contractor's records will be maintained in accordance with sound accounting practices. Contractor's records concerning the Services, including, without limitation, Contractor's time and billing records, will be made available to City for inspection, copying, and/or audit immediately upon City's request.

4.8 Confidential Information. During the term of this Agreement, and at all times thereafter, Contractor will maintain all Confidential Information (as defined below) in the strictest confidence and will not directly or indirectly use, communicate, and/or disclose any Confidential Information to any person without the city manager's prior written consent, except that Contractor may (a) use Confidential Information to perform the Services to the extent necessary, and (b) communicate or disclose Confidential Information in accordance with a judicial or other governmental order or as required by applicable law, but only if Contractor promptly notifies the city manager of the order and complies with any applicable protective or similar order. Contractor will promptly notify the city manager of any unauthorized use, communication, and/or disclosure of any Confidential Information and make every possible effort to retrieve any such Confidential Information disclosed by Contractor, and mitigate the disclosure. Upon the earlier of City's request or the termination of this Agreement, Contractor will immediately return to City all documents, instruments, and/or materials containing any Confidential Information accessed or received by

Contractor, together with all copies and summaries of such Confidential Information. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not operate to transfer any ownership or other rights in or to the Confidential Information to Contractor or any other person. For purposes of this Agreement, the term “Confidential Information” means any documentation, information, and/or materials identified by City as confidential and/or any documentation, information, and/or materials relating to or concerning City’s future plans, business affairs, employment, legal, and litigation matters that need to be protected from improper disclosure, in whatever form (e.g., hard and electronic copies, etc.), that is received or assessed by Contractor; provided, however, the term “Confidential Information” does not include City’s public records which are non-exempt public records under applicable federal, state, and/or local laws.

5. Term; Termination.

5.1 Term of Agreement. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect until June 30, 2024, unless sooner terminated as provided in this Agreement. This Agreement may be extended by the parties’ mutual written agreement.

5.2 Termination by Mutual Agreement or City’s Prior Notice. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated (a) at any time by the mutual written agreement of City and Contractor, and/or (b) by City for convenience and without cause by giving thirty (30) days’ prior written notice of such termination to Contractor.

5.3 Immediate Termination. Notwithstanding anything contained in this Agreement to the contrary, City may terminate this Agreement immediately upon notice to Contractor upon the happening of any of the following events: (a) Contractor engages in any form of dishonesty or conduct involving moral turpitude related to Contractor’s independent contractor relationship with City or that otherwise reflects adversely on the reputation or operations of City; (b) Contractor fails to comply with any applicable law related to Contractor’s independent contractor relationship with City; (c) continuous and repeated problems occur in connection with the performance of the Services; (d) Contractor breaches and/or otherwise fails to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement; and/or (e) the termination of the Grant Agreement and/or lack of grant funds under the Grant Agreement. The determination as to whether any of the aforementioned events have occurred will be made by City in City’s sole discretion.

5.4 Consequences of Termination. Upon termination of this Agreement, (a) City will not be obligated to reimburse or pay Contractor for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments, and (b) Contractor will reimburse City if required by OIFA pursuant to a demand from OIFA to City (which demand will be provided to Contractor) subject to and in accordance with the terms and conditions of the Grant Agreement. Within a reasonable period of time after termination of this Agreement (but in no event later than five days after termination), Contractor will deliver to City all materials and documentation, including raw or tabulated data and work in progress, related to or concerning the Services. Termination of this Agreement by City will not constitute a waiver or termination of any rights, claims, and/or causes of action City may have against Contractor.

5.5 Remedies. If a party breaches or otherwise fails to perform any of its representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting party may, in

addition to any other remedy provided to the non-defaulting party under this Agreement, pursue all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

6. Miscellaneous.

6.1 Severability; Assignment; Binding Effect. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Contractor will not assign this Agreement to any person without City's prior written consent. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each party.

6.2 Attorney Fees; Dispute Resolution. If any arbitration or litigation is instituted to interpret, enforce, and/rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. If any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), City and Contractor will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, either party may initiate a suit, action, arbitration, or other proceeding to interpret, enforce, and/or rescind this Agreement.

6.3 Governing Law; Venue. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon.

6.4 Attachments; Further Assurances; Notices. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement. If any provisions contained in an attached exhibit, schedule, instrument, document, and/or other attachment conflicts with this Agreement, the provisions of this Agreement will control. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. Time is of the essence with respect to Contractor's performance of its obligations under this Agreement. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation of delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

6.5 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Contractor. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Contractor has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.

6.6 Person; Interpretation; Execution. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of either party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and effective for all purposes as of the Effective Date.

CITY:
City of John Day,
an Oregon municipal corporation

CONTRACTOR:

By:
Its:

By: _____
Its: _____

Schedule 1.1
Services

Subject to the terms and conditions contained in this Agreement, Contractor will perform grant administration services associated with the Grant Agreement which provides funds for City to engineer and design City's broadband system improvements (the "Project"), including, without limitation, the following services:

A. Task 1 – Grant Administration Services. Contractor will provide the following grant administration and related services associated with the EDA and DAS grants for and on behalf of City and as delineated in the appropriate grant handbook and other agency specified publications (collectively, the "Grant Administration Services"):

1. Coordinate the Following Grant Administration Activities:

- Serve as central contact for local, state, and federal people involved in the Projects.
- Possess knowledge of state and federal laws/requirements affecting the Projects.
- Coordinate all grant activities and administer all grant related contracts.
- Monitor Project progress against the Scope of Work and Budget, providing the results to Coalition and granting agencies.
- Ensure grant recipient(s) meets all conditions of the grant contract and that contractors fulfill contractual obligations.
- Procure (or coordinate with the procurement of) architect/engineering services and construction contractors:
 - Possess knowledge of state law for procurement of materials and services.
 - Comply with state and local procurement laws and ordinances.
 - Prepare Requests for Proposals and/or Requests for Qualifications.
 - Coordinate drafting and reviewing of contracts to ensure compliance with federal requirements.
 - Prepare scope of services for each contract and obtain approval by appropriate regulatory authorities.
 - Ensure state review of all Project-related contracts.
 - Prepare contract amendments or requests to state for grant contract amendments, when needed.
- Ensure that all the exhibits and conditions of the grant contract are fulfilled.
- Label all correspondence and other required documents with the appropriate project ID number(s).
- Obtain copies of all project contracts and agreements and provide copies to granting agencies.
- Submit Women and Minority Business Enterprise outreach efforts and document the same.
- Prepare budgets, schedules, and amendments as needed.
- Establish and maintain grant files during the Projects, which upon project completion will be given to Coalition for Coalition's records.
- Prepare cash requests, progress reports and other documents on an "as needed basis".
- Participate in visits from the various State and Federal agencies to monitor the Projects. Prepare any responses to "Findings" of these visits after consulting with the Coalition.
- Prepare and (after review by Coalition) submit reports as needed, including the Project Completion Report.

- Provide financial information on the grants for any audits performed to include the City of John Day IT Fund (Fund 07) Annual Audit.
 - Other duties as assigned/needed.
2. Complete “first draw” Requirements Prior to Requesting a Drawdown of Grant Funds:
- Ensure preparation and signing of *Finding of Exemption from Part 58 Environmental Review Requirements* for grant administration, engineering, architectural and other “exempt” activities (as applicable).
 - Ensure that the appropriate environmental review processes occurred and are completed BEFORE any construction contract is awarded. This includes:
 - Preparation of the Environmental review record (if applicable).
 - Publication of appropriate notice.
 - *Request for Release of Funds* submitted to agencies.
 - Obtain review of plans, specification and all bid documents, including the advertisement (call) for bids, at least ten days before anticipated advertisement date.
3. Complete “final draw” Requirements and Project Closeout:
- Submit a completed *Minority, Women and Emerging Small Business Activity Report (if needed)*.
 - Submit a completed Section 3 Summary Report, if applicable.

Coalition Responsibilities. The following services will be the responsibility of Coalition (and not the selected consultant):

1. Initial procurement of grant administration services which includes, without limitation, legal review of contract and agreements, and monitoring the performance of the selected consultant and provide support.
2. Initial procurement of the architect/engineering services which includes, without limitation, coordinating with selected consultant to procure these services, reviewing and approving procurement documents, selecting the contractor for these services, and legal review of contracts and agreements
3. City of John Day will be the fiscal agent for these grants, receiving and dispersing the grant funds after the selected consultant has reviewed and approved the requests.

B. Project Management Services. The selected consultant will provide the following project management and related services for and on behalf of Coalition (collectively, the “Project Management Services”):

1. Work with City to identify all areas of potential effect.
2. Prepare the Project Management Plans.
 - Analyze project conditions and potential project impacts for Coalition

- Assist Coalition with consults with relevant State and Federal cross-cutters, including, without limitation, the following: DAS, EDA, and SHPO/THPO.
- Work with Coalition's selected engineer and/or general contractors to provide project details to relevant agencies for review.

3. Ensure Coalition's projects comply with relevant grantor requirements.

Coalition Responsibilities. The following services will be the responsibility of Coalition (and not the selected consultant):

1. Designating a Certifying Officer who will attest to the Coalition's compliance with environmental procedures.
2. Fulfilling the roles designated to government grant recipients as it relates to Environmental Review and any tasks that must be completed by the government.
3. Completing any historic (State or Tribal) preservation requirements which must be completed by the government.
4. Providing public access to the completed project records and other requirements of the public involvement process, which may involve hosting public hearing(s) and/or producing public records. Consultant shall not be the custodian of any public records related to the Projects.
5. Submitting the final drafts and/or deliverables for the Projects to the granting agencies.
6. Preparation of agendas and minutes for Coalition board meetings.

Schedule 1.2
Schedule

[to be inserted]

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Exhibit A
Required Contract Clauses

[to be inserted]

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