

**BENTON COUNTY  
HEALTH DEPARTMENT  
REQUEST FOR PROPOSALS  
FOR  
COVID-19 PUBLIC HEALTH  
LABORATORY TESTING SERVICES**

**RFP #1921-09**

**Release Date: May26, 2020**

**Proposals Due Date: 4:00 p.m. on June 8, 2020**

**Refer Questions to:**

Judy Blackburn

Phone number: 541-766-6037

[Judy.a.blackburn@co.benton.or.us](mailto:Judy.a.blackburn@co.benton.or.us)

**Submit Proposals to:**

Benton County Health Department

Attn: Judy Blackburn, Contracts Specialist

4077 SW Research Way, PO Box 3020

Corvallis, OR 97339

**Electronic copies of this RFP, Attachments and the “Proposal Packet” can be obtained from Benton County website at: <https://www.co.benton.or.us/rfps>**

All Proposal documents shall be submitted in hard copy. Electronic or facsimile submissions shall be rejected. **Proposals submitted after the closing date and time shall not be accepted.**

## **INTRODUCTION**

Benton County Health Department (BCHD), through its Public Health Division, is seeking a laboratory from whom it may purchase COVID-19 rapid polymerase chain-reaction (PCR) laboratory testing services that fall outside of the scope of services provided by its Community Health Centers.

BCHD seeks to contract with a laboratory to provide services for the following immediate needs:

- Rapid PCR COVID-19 testing services for focal outbreaks
- Ongoing rapid PCR COVID-19 surveillance testing for congregated living spaces

*Note:* Benton County reserves the right to continue to send COVID-19 diagnostic testing samples to the Oregon Public Health Laboratory (OPHL) and other reference laboratories for testing if it is in the best interest of Benton County and the population served.

## **BACKGROUND AND TARGET POPULATIONS**

The Oregon Health Authority advised Benton County of increased COVID -19 testing demand and the possibility of slower than desired turnaround times for reporting COVID-19 test results through the Oregon State Public Health Laboratory. Given the plans to relax mitigation efforts as the County progresses through reopening “phases”, it is essential the County has a contract with a laboratory to perform COVID-19 testing in an expedient manner for ongoing surveillance and response to focal outbreaks.

In addition, Benton County is committed to develop strategies to prevent further spread of COVID-19 in the community. Part of this plan is to perform contact investigation of persons potentially exposed to COVID-19 through social interactions, at work, in health care facilities and in congregate living settings. Priority settings include:

- Health care facilities including long-term care facilities
- Group homes/other congregate living facilities
- Homeless shelters / camps / day-use facilities
- County correctional facilities
- Multigenerational homes
- Agricultural / business / industrial facilities

At this time, testing volumes and length of time necessary to continue testing is unknown. For this reason, the County intends to award one contract as a result of this RFP. The resultant contract will have an initial term of one year, with the option to renew on a yearly basis for a total term of five (5) years.

## **FUNDING**

The majority of payment for COVID-19 testing services will come from the laboratory’s billing to the patient’s primary or secondary insurance providers. Based upon the 2017-21 Benton County Community Health Assessment, approximately 95% of Benton County residents had some form of health insurance, 51% had private employer insurance, 34% had Medicaid, and 17% had Medicare. BCHD has funds available to supplement insurance payments and emergency FEMA reimbursement for COVID-19 testing services.

Funding of the work described in this RFP is not guaranteed, and may be granted on an as needed basis. Fluctuations in funding year to year should be expected. Benton County cannot assure that any particular level of work will be assigned and the contract will permit Benton County to add or remove work as necessary depending on availability of funding and testing needs.

## **MINIMUM CRITERIA:**

There are no minimum criteria for this sourcing event. \_\_\_\_\_

## SCHEDULE OR EVENTS

05/26/2020	RFP issued
06/01/2020	Last Day for questions concerning RFP and project emailed to <a href="mailto:judy.a.blackburn@co.benton.or.us">judy.a.blackburn@co.benton.or.us</a> <b>no later than 4:00 p.m.</b>
06/03/2020	Answers to questions posted on Benton County's Website at: <a href="https://www.co.benton.or.us/rfps">https://www.co.benton.or.us/rfps</a>
06/08/2020	<b>Proposals are due no later than 4:00 p.m.</b> at Benton County Health Department, 4077 SW Research Way, Corvallis, OR 97333. <b>Late submittals will not be accepted.</b>
06/12/2020	Notice of Intent to Award posted <b>no later than 4:00 p.m.</b> on Benton County's website at: <a href="https://www.co.benton.or.us/rfps">https://www.co.benton.or.us/rfps</a>
06/19/2020	Protest period ends <b>at 4:00 p.m.</b>
06/22/2020	Awarded Contract Issued
Date of full execution of awarded Contract	Work begins

The County reserves the right, at its sole discretion, to adjust this schedule as it deems necessary.

## PRE-PROPOSAL CONFERENCE

There will be no pre-proposal conference for this RFP.

## SCOPE OF WORK

Services under the awarded contract shall be negotiated and may consist of the following:

### 1. Medical Laboratory Testing and Resulting:

Provide rapid PCR COVID-19 laboratory testing services for tests approved by the CDC. Tests may include Anterior nasal, Oropharyngeal and Nasopharyngeal tests. Results will be reported to the State of Oregon Electronic Laboratory Reporting (ELR) system and BCHD ordering Provider.

### 2. Laboratory Consultation Services:

Laboratory consultation services and any other consultation services as needed to aid providers with test result interpretation.

### 3. Reporting:

- Provide immediate test results to BCHD Providers in the event of "COVID-10 positive result" within 24 hours of acquiring a positive result
- Provide negative test results to BCHD Providers within 5 days
- Provide monthly reports of COVID -19 tests ordered by BCHD. Reports shall be provided monthly and supply the following detail:
  - Patient Last Name, First Name and Middle Initial, Patient Medical Record Number, Test Name,

Test Number, Test volume, Charge billed to primary insurance, Charge billed to secondary insurance, balance billed insured patients, and Total Test Volume for each Test Type

- Provide reports upon request of County for use in complying with State and Federal Financial Reporting requirements. Other reports may be mutually agreed upon between the Parties as the need arises

**4. BCHD Staff Training, Support Services and Related Supplies:**

- Provide BCHD staff training materials on specimen collection requirements
- Provide all supplies needed for specimen collection and any required form
- Provide any needed training for BCHD technical support staff
- Provide support to resolve specimen issues and/or ordering issues
- Provide support for inquiries regarding testing options or delayed/ missing test results
- Provide support for specimen collection, processing and transport questions

**5. Specimen Pick-Up Service:**

Provide transportation of specimens in appropriate conditions (refrigeration/frozen/room temperature) from BCHD or other locations or provide instructions on times of acceptable pickup/delivery by BCHD staff.

**6. Billing services:**

- A. Laboratory is to bill the patients’ primary and secondary insurance and accept insurance reimbursement as payment in full.
- B. Laboratory shall make reasonable efforts to correct any claim errors and omissions and re-invoice the responsible payer with a corrected claim.
- C. Laboratory shall bill BCHD for self-pay (uninsured) patients.

BCHD shall pay for self-pay (uninsured) patients on the following basis:

- Upon receipt of a correct itemized monthly invoice for services performed, with properly invoiced prices that do not exceed the prices set forth in the current fee schedule provided at the beginning of the contract and any amendments.

<p>All invoices must include the following:</p> <ul style="list-style-type: none"> <li>• Date of service</li> <li>• Lab Reference Number</li> <li>• Test Name</li> <li>• Unit cost of test</li> <li>• Balance Due</li> </ul>	<p>Invoices shall be sent by mail or email to:</p> <p>Benton County Health Department          Accounts Payable          PO Box 3020          Corvallis, OR 97339  <a href="mailto:Hdpurchasing@co.benton.or.us">Hdpurchasing@co.benton.or.us</a></p>
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- Payment terms shall be net Forty-Five days provided the work described in the invoice has been performed in accordance with the terms of the contract.
- All final billings affecting contract payments must be received within forty-five (45) days after the end of the contract period.

D. Any additional expenses will require prior approval in writing from BCHD.

### **7. Laboratory Directorship services:**

- Provide Laboratory Directorship and ensure compliance with all CLIA regulations
- Ensure quality performance of all aspects of testing conducted within the limitations of the clinical laboratory license
- Ensure Laboratories are operating in safe environmental conditions including appropriate mitigation strategies such as social distancing and appropriate PPE to minimize the spread of COVID infection among staff
- Approve all laboratory procedures and ensure all approved procedures are available to laboratory staff
- Ensure laboratory employs a sufficient number of employees with appropriate education/training to cover the workload
- Ensure lab staff competencies and proficiencies are conducted in accordance with all applicable rules and regulations

### **8. Quality**

Laboratory to:

- Provide proactive notifications of test delays and recalls
- Provide test results immediately for those designated as STAT
- Work with Benton County in continuous quality improvement efforts

### **9. Privacy**

Proposer to:

- Comply with all requirements of Benton County's standard Business Associate Agreement (BAA) without modification (see attached BAA in Sample Contract)
- Maintain system security to protect patient health information as required by HIPAA
- Ensure policies are in place with subcontractors to protect patient health information as required by HIPAA

### **10. Technology Considerations**

This RFP will assess the Proposers Electronic Laboratory Reporting compatibility and any interface capability with BCHD through their Electronic Health Record provided by EPIC.

### **11. PERFORMANCE MEASURES/PERFORMANCE CONTRACTING**

Final performance measures will be negotiated between BCHD and the selected Proposer.

Typical performance measures may include:

- Receiving test results and reports within a designated timeframe as specified in the contract
- Communicating to BCHD in cases of STAT and critical findings
- Connectivity and Interface performance
- Sustainable business practices

## 12. FEMA RISK ASSESSMENT

Any contract awarded as a result of this RFP may become available for Federal Funding (as identified by a Catalog of Federal Domestic Assistance number) and will be subject to a Risk Assessment (which includes an evaluation of financial stability, quality of financial /management systems, experience with federal funds, reports and findings from audits) completed by Benton County (if one has not been submitted in the last year) Failure to submit the required documents will be grounds for termination of any contract awarded as a result of this RFP.

## 13. HIPPA COMPLIANCE

As Covered Entities and to the extent required by 42 U.S.C. 1171 *et seq.* enacted by the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, the Parties agree to appropriately safeguard protected health information made available to or obtained by the other Party.

## EVALUATION PROCESS AND CRITERIA

- a. *Evaluation Committee.* A BCHD committee will evaluate all responsive proposals. The committee will be composed of County staff and other parties that may have relevant expertise or experience. The committee will score and recommend proposals in accordance with the evaluation criteria set forth in this RFP. Evaluation of the proposals shall be within the sole judgment and discretion of the BCHD evaluation committee members.
- b. *Categories.* The evaluation criteria and their respective weights are as follows:

CATEGORIES	MAXIMUM POINTS POSSIBLE
Capacity	15
Resulting	15
Supplies	15
Turnaround Time	15
Insurance Billing	10
Fees Charged	10
Test and Specimen Delivery	10
Training and Support	10
<b>Grand Total</b>	<b>100</b>

- c. *Best Value.* BCHD will select the proposal that presents the best value and is most advantageous to the BCHD and the public. Accordingly, BCHD may not necessarily award the proposer with the lowest price proposal if doing so would not be in the overall best interest of BCHD. BCHD reserves the right to expand or reduce the proposed scope of work during the contract negotiations based on budget constraints.

## **CONTRACT AWARD**

BCHD seeks to award one contract as a result of this RFP. Award, as determined by BCHD, will be made to the responsible Proposer whose Proposal BCHD determines is most advantageous to BCHD based on the evaluation process and evaluation factors described in this RFP.

BCHD strongly encourages the participation of Minority-Owned, Women-Owned, and Emerging Small Businesses and Organizations in providing these services.

## **PROTEST AND APPEALS**

A proposer may protest the award of a contract or the intent to award a contract, whichever comes first, if the conditions set forth in ORS 279B.410 (1) are satisfied. The protest **must be submitted in writing** by mail, courier or hand delivery to Benton County's County Counsel within seven (7) days after issuance of the notice of intent to award the contract.

County Counsel Office  
Attn: Vance Croney, Benton County Counsel  
205 NW 5<sup>th</sup> Street, PO Box 3020  
Corvallis, OR 97339-30201

All letters of protest shall clearly identify the reasons and basis for the protest. Benton County's County Counsel will issue a written disposition in a timely manner as set forth in ORS 279B.410(4), which shall include the reason for the action taken and the process for appealing the decision. A proposer must file a written protest with BCHD and exhaust all administrative remedies before seeking judicial review of the BCHD's contract award decision

## **CONTRACT NEGOTIATION**

The County will initiate contract negotiations with the responsive and responsible Proposer with the highest scoring proposal. Benton County may, at its option, elect to negotiate general contract terms and conditions, services, pricing, implementation schedules, and such other terms as the County determines are in the County's best interest. If negotiations fail to result in a contract, the County reserves the right to terminate the negotiations and initiate contract negotiations with the next highest scoring responsive and responsible Proposer. This process may continue until a contract agreement is reached.

## **CONTRACT FORM**

By submitting a proposal, proposer agrees to comply with the requirements of the RFP, including the terms and conditions of the **Sample Contract for Services (Exhibit 1)**. Proposer shall review the attached Contract for Services and note exceptions. Unless proposer notes exceptions in its proposal, the County intends to enter into a Contract for Services with the successful proposer substantially in the form set forth in Contract for Services (Exhibit 1). It may be possible to negotiate some provisions of the final Contract for Services; however, many provisions cannot be changed. Proposer is cautioned that the County believes modifications to the standard provisions constitute increased risk and increased cost to the County. Any subsequent negotiated changes are subject to prior approval of the County's Legal Counsel.

## BCHD RESERVATIONS:

- RFP Amendment, Cancellation and Right of Rejection.
  - i. The County reserves the unilateral right to amend this RFP in writing at any time by posting the addendum on the Benton County website at: <https://www.co.benton.or.us/rfps>. BCHD may extend the deadline for submission of proposals by written addendum. Proposers are responsible to view the website periodically for any addendum to the RFP. Proposers shall respond to the final written RFP, its exhibits and attachments, and all addenda. BCHD also reserves the right, in its sole discretion, to reject any and all proposals or to cancel or reissue the RFP. BCHD reserves the right, in its sole discretion, to waive minor informalities in proposals provided such action is in the best interest of BCHD. Where BCHD waives minor informalities in proposals, such waiver does not modify the RFP requirements or excuse the applicant from full compliance with the RFP. Notwithstanding any minor variance, BCHD may hold any proposal to strict compliance with the RFP.
- Confidentiality.

BCHD will retain a master copy of each proposal to this RFP, which becomes public record after the notice of intent to award unless the proposal or specific parts of the proposal can be shown to be exempt by law under ORS Chapter 192. If a proposer believes that any portion of its proposal contains any information that is a trade secret under ORS 192.311-431 or otherwise is exempt from disclosure under the Oregon Public Records Law, that proposer shall complete and submit the Attachment 2: Trade Secret Form and a fully redacted version of its proposal.

Proposer is cautioned that cost information generally is not considered a trade secret under Oregon Public Records Law and identifying the proposal as confidential, in whole or in part, as exempt from disclosure is not acceptable. BCHD advises each proposer to consult with its own legal counsel regarding disclosure issues. If proposer fails to identify the portions of the proposal that proposer claims are exempt from disclosure, proposer has waived any future claim of non-disclosure of that information.
- Proposer Responsible for Incurred Costs.

BCHD shall not be liable for any expenses incurred by proposer in both preparing and submitting its proposal or contract negotiation process, if any.

## INSTRUCTIONS TO PROPOSERS

Proposers must submit one (1) original signed proposal and three (3) hard copies of the proposal. Proposals are due at the County **no later than June 8, 2020, 4:00 pm, PST**. Envelopes or packages shall be clearly marked **“RFP #1921-09 COVID-19 Public Health LABORATORY SERVICES”**

### Proposal Checklist (Proposal Packet)

The proposal must include the following information to be responsive

- Cover Letter
- Attachment 1: Proposal Form
- Attachment 2: Trade Secret Form
- Attachment 3: Reference Form
- Attachment 4: Question Responses
- Proposer shall review the attached Contract for Services (Exhibit 1) and note exceptions in its proposal.

- Proposers will use the forms supplied in the “Proposal Packet” to respond to this RFP.
- The “Proposal Packet” is available on the County’s website at <https://www.co.benton.or.us/rfps>
- The proposals must be typed and questions answered in the order presented.
- Promotional materials may not be submitted with the proposals.



**Attachment 1. Proposal Form**

OFFEROR NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_ WEB SITE: \_\_\_\_\_

TAXPAYER ID NUMBER: \_\_\_\_\_ DATE/STATE OF INCORPORATION: \_\_\_\_\_

BUSINESS DESIGNATION:     Corporation                       Sole Proprietor                       Partnership  
     S Corporation                       Non-Profit                               Government  
     Other \_\_\_\_\_

CERTIFICATION/LICENSE NUMBER: \_\_\_\_\_

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

1. The Proposer is a resident bidder, as described in ORS 279A.120, of the State of , \_\_\_\_\_ and has not discriminated against any minority, women, or emerging small business enterprises in obtaining any required subcontracts, in accordance with ORS 279A.110. "Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder". ORS 279A.120 (1) (b).
2. That this proposal is, in all respects, fair and without fraud; that it is made without collusion with any official of the county; and that the proposal is made without any collusion with any person making another proposal on this Contract.
3. Information and prices included in this proposal shall remain valid for ninety (90) days after the proposal due date or until a Contract is approved, whichever comes first.
4. The Proposer acknowledges receipt of all Addenda issued under the RFP.
5. The Proposer certifies that it does not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, financial ability, age or other non-job-related factors as per ORS 659 and USC 422000e.
6. The Proposer, acting through its authorized representative, has read and understands all RFP instructions, specifications, and terms and conditions contained within the RFP and all Addenda, if any;
7. The Proposer agrees to and shall comply with, all requirements, specifications and terms and conditions contained within the RFP, including all Addenda, if any;
8. The proposal submitted is in response to the specific language contained in the RFP, and Proposer has made no assumptions based upon either (a) verbal or written statements not contained in the RFP, or (b) any previously-issued RFP, if any.
9. The Proposer agrees that if awarded the Contract, Proposer shall be authorized to do business in the State of Oregon at the time of the award;
10. The signatory of this Proposal Form is a duly authorized representative of the Proposer, has been authorized by Proposer to make all representations, attestations, and certifications contained in this proposal document and all Addenda, if any, issued, and to execute this proposal document on behalf of Proposer.
11. By signature below, the undersigned Authorized Representative hereby certifies on behalf of Proposer that all contents of this Proposal Form and the submitted proposal are truthful, complete and accurate. Failure to provide information required by the RFP may ultimately result in rejection of the proposal.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS** - The Offeror certifies to the best of its knowledge and belief that neither it nor any of its principals:

1. Are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from submitting bids or proposals by any federal, state or local entity, department or agency;
2. Have within a five-year period preceding the date of this certification been convicted of fraud or any other criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally charged with commission of any of the offenses enumerated in item number 2 of this certification;
4. Have, within a five-year period preceding the date of this certification had a judgment entered against contractor or its principals arising out of the performance of a public or private contract;
5. Have pending in any state or federal court any litigation in which there is a claim against contractor or any of its principals arising out of the performance of a public or private contract; and
6. Have within a five-year period preceding the date of this certification had one or more public contracts (federal, state, or local) terminated for any reason related to contract performance.

**Where Offeror is unable to certify to any of the statements in this certification, Offeror shall attach an explanation to their offer. The inability to certify to all of the statements may not necessarily preclude Offeror from award of a contract under this procurement.**

IF THE PROPOSAL IS MADE BY A JOINT VENTURE, IT SHALL BE EXECUTED BY EACH PARTICIPANT OF THE JOINT VENTURE.

THIS OFFER SHALL BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE PROPOSER; ANY ALTERATIONS OR ERASURES TO THE OFFER SHALL BE INITIALED IN INK BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.

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

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contact Person (Type or Print): \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

Fax Number: (\_\_\_\_) \_\_\_\_\_

**The Offeror will notify the County representative on the cover page of this RFP within 30 days of any change in the information provided on this form.**

**Attachment 2: Trade Secret Form**

1. I am an authorized representative of the Proposer, I have knowledge of the Request for Proposals referenced herein, and I have full authority from the Proposer to submit this Trade Secret Form and accept the responsibilities stated herein.
2. I am aware that the Proposer has submitted a Proposal, to Benton County in response to County's 1921-19 Request for Proposals and I am familiar with the contents of the RFP and the Proposal.
3. I have read and am familiar with the provisions of Oregon's Public Records Law, Oregon Revised Statutes ("ORS") 192.311 through 192.431, and the Uniform Trade Secrets Act as adopted by the State of Oregon, which is set forth in ORS 646.461 through ORS 646.475. I understand that the Proposal is a public record held by a public body and is subject to disclosure under the Oregon Public Records Law unless specifically exempt from disclosure under that law.
4. I have reviewed the information contained in the Proposal. The Proposer believes the information listed in Exhibit A is exempt from public disclosure (collectively, the "Exempt Information"), which is incorporated herein by this reference. It is my opinion that the Exempt Information constitutes "Trade Secrets" under either the Oregon Public Records Law or the Uniform Trade Secrets Act as adopted in Oregon because that information is either:
  - A. A formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that:
    - i. is not patented,
    - ii. is known only to certain individuals within the Proposer's organization and that is used in a business the Proposer conducts,
    - iii. has actual or potential commercial value, and
    - iv. gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
  - or
  - B. Information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:
    - i. Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
    - ii. Is the subject of efforts by the Proposer that are reasonable under the circumstances to maintain its secrecy.
5. I understand that disclosure of the information referenced in Exhibit A may depend on official or judicial determinations made in accordance with the Public Records Law.

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Authorized Representative Signature

Proposer identifies the following information as exempt from public disclosure:

**Attachment 3: Reference Form**

Proposer must provide references that can be contacted regarding the quality of workmanship and service provided to current and past customers.

***Reference #1***

Firm Name for Contact Person: \_\_\_\_\_

Name of Contact Person \_\_\_\_\_

Telephone Number for Contact Person \_\_\_\_\_

Email Address for Contact Person \_\_\_\_\_

***Reference #2***

Firm Name for Contact Person: \_\_\_\_\_

Name of Contact Person \_\_\_\_\_

Telephone Number for Contact Person \_\_\_\_\_

Email Address for Contact Person \_\_\_\_\_

***Reference #3***

Firm Name for Contact Person \_\_\_\_\_

Name of Contact Person \_\_\_\_\_

Telephone Number for Contact Person \_\_\_\_\_

Email Address for Contact Person \_\_\_\_\_

The references will be used to confirm the selection rather than as an evaluation criterion. However, if several proposers are close in the final evaluation, references may be used to select the best evaluated proposer.

**Attachment 4: PROPOSAL QUESTIONS**

- 1. CAPACITY:** **Total Points Available 15**  
 Provide an explanation of the testing capacity your laboratory has for both COVID-19 Outbreak testing and Surveillance testing. Your answer should include the volume of tests the laboratory can handle per day on a routine basis, and also your capacity for rapid-response, “on-demand” or “emergent” testing for Focal Outbreaks and assurance that any on-going assessment testing can be met.  
*Considerations: The County seeks a laboratory which can demonstrate handling a large quantity of tests on an “as needed” basis.*
- 2. RESULTING:** **Total Points Available 15**  
 Describe how your laboratory will report COVID-19 test results to Benton County Health Department. Your answer should include the use of Oregon State’s Electronic Laboratory Reporting (ELR) system, if applicable and how HIPAA compliance is assured. If utilization of County’s existing Electronic Health Record through EPIC is an option, you should include use of this interface in your response.  
*Considerations: The County seeks a laboratory that can provide test results in the most expedient fashion and in an HIPAA compliant format*
- 3. SUPPLIES:** **Total Points Available 15**  
 Describe your laboratory's ability to supply the County with the appropriate test kit on an "as needed" basis and on an "emergent" basis. Your answer should include the availability of how many test kits the laboratory keeps on hand and the time it would take to secure test supplies in the amounts of < 50 test, 50 to 100 tests, and >100 tests at one time.  
*Considerations: The County seeks a laboratory which has access to a secure supply chain and can ensure both low to high volumes of testing supplies upon request.*
- 4. TURNAROUND TIME:** **Total Points Available 15**  
 Describe your laboratory’s turnaround time for COVID-19 testing for test <50 samples, 50 to 100 samples, and > 100 samples.  
*Considerations: The County seeks a laboratory that can provide expedient testing and reporting for all samples regardless of volume.*
- 5. INSURANCE BILLING:** **Total Points Available 10**  
 Does your laboratory have the ability to bill the subjects’ primary and secondary insurance? Will your laboratory accept insurance payments as “payment in full” or will your laboratory bill the test subject for any fees due? Your answer should include any instruction as to what forms need to be provided with test samples and your turnaround time to bill third party payers.  
*Consideration: The County seeks a laboratory that has the ability to bill third party payer and accept insurance payment as “payment in full”*
- 6. FEES CHARGED TO COUNTY:** **Total Points Available 10**  
 What fees will be charged to Benton County in provision of COVID-19 testing? Your answer should include any fees charged for uninsured patient tests, any indigent program offered to the uninsured, and other miscellaneous fees including fees for supplies, courier service fees or any other fees related to the testing services provided.  
*Consideration: The County seeks a laboratory which provides the best rate for uninsured (self-pay) subjects and the lowest miscellaneous fee schedule.*

**7. TEST AND SPECIMEN DELIVERY: Total Points Available 10**

- A. What methods does your laboratory use to make complete test kits whether they are for anterior nasal, nasopharyngeal or oropharyngeal samples?"
- B. What method would the County use to provide your laboratory with collected samples?

Your answer should include the use of courier service, mail or FedEx, or available for pickup or delivery at laboratory's direction. In addition, provide a description of hours of operation or courier schedule.

*Consideration: the County is seeking a laboratory which provides the least use of County workforce.*

**8. STAFF TRAINING AND SUPPORT SERVICES Total Points Available 10**

Does your laboratory provide training on specimen collection and "on-call" technical support?

Your answer should describe your laboratory's ability to provide protocols for collecting samples and transportation of samples. Any other support services that your laboratory may offer should be documented in this section.

*Consideration: The County seeks a laboratory willing to provide guidance to those administering COVID-19 tests and to help ensure the administration of such tests are in compliance with CLIA.*

## EXHIBIT 1

### BENTON COUNTY CONTRACT FOR SERVICES

This is an agreement between BENTON COUNTY, OREGON, a political subdivision of the State of Oregon, by and through its Health Department, hereinafter called COUNTY, and [RESERVED], an active Oregon Corporation hereinafter called CONTRACTOR.

WHEREAS, COUNTY has need for the services of an individual with the particular training, ability, knowledge, and experience possessed by CONTRACTOR,

WHEREAS COUNTY issued RFP #1921-09 and CONTRACTOR was chosen as a successful responder,

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree as follows:

1. TERM OF CONTRACT: This contract shall become effective on [RESERVED], and shall have an initial term through June 30, 2021. After the initial term the agreement may be extended on a yearly basis upon mutual agreement of the Parties through a written contract amendment signed by both parties. The total term of the contract including extension periods shall not exceed past June 30, 2025.

SERVICES TO BE PROVIDED: CONTRACTOR shall provide COVID-19 laboratory testing services as detailed in Attachment B "Scope of Work". Services provided under this agreement are related to the COVID-19 Emergency Declaration and therefore are subject to additional contract provisions required by the Department of Homeland Security, Federal Emergency Management Agency as defined in "Attachment C".

1. PAYMENT: CONTRACTOR shall be paid \$[RESERVED]. Contractor shall be paid within 45 days from submittal of the invoice and upon approval of the invoice by the Health Department's Public Health Deputy Director. The total amount paid to CONTRACTOR for the initial term of the contract period shall not exceed \$[RESERVED]. Future funding shall be detailed in the contract extension amendments signed by both parties.

2. NON APPROPRIATION: CONTRACTOR understands and agrees that COUNTY'S payment obligation under this agreement is contingent on COUNTY receiving appropriations, limitations, or other expenditure authority sufficient to allow COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this agreement.

3. ASSIGNMENT/DELEGATION: Neither party shall assign, subcontract or transfer any interest in or duty under this agreement without the prior written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented.

4. STATUS OF CONTRACTOR: The parties intend that CONTRACTOR, in performing the services specified in this agreement, shall act as an independent contractor. Although COUNTY reserves the right to (i) determine and modify the delivery schedule for work to be performed and (ii) evaluate the quality of the completed performance, only CONTRACTOR shall have the control of the work and the manner in which it is performed. CONTRACTOR is not to be considered an agent or employee of the COUNTY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits COUNTY provides its employees.

CONTRACTOR will not be eligible for any federal social security, state workers' compensation, unemployment insurance, or Public Employees Retirement System benefits from amounts paid under this contract, except as a self-employed individual.

If this payment is to be charged against Federal funds, CONTRACTOR certifies that it is not currently employed by the Federal government and the amount charged does not exceed its normal charge for the type of service provided.

COUNTY will report the total amount of all payments to CONTRACTOR, including any expenses, in accordance with Federal Internal Revenue Service and State of Oregon Department of Revenue regulations. CONTRACTOR shall be responsible for any Federal or State taxes applicable to amounts paid under this contract.

5. WARRANTY: COUNTY has relied upon representations by CONTRACTOR regarding its professional ability and training as a material inducement to enter into this contract. CONTRACTOR represents and warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of CONTRACTOR's work by COUNTY shall not operate as a waiver or release of such warranty.

6. INDEMNIFICATION: CONTRACTOR shall hold harmless, indemnify, and defend COUNTY, its officers, agents, and employees from any and all liability, actions, claims, losses, damages or other costs including attorney's fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from,

during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the COUNTY and its employees. Such indemnification shall also cover claims brought against COUNTY under state or federal workers' compensation laws. If any aspect of this indemnity or the above warranty shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification or the above warranty.

7. **INSURANCE:** CONTRACTOR and any subcontractors shall maintain insurance acceptable to the COUNTY as provided in Attachment A. Such insurance shall remain in full force and effect throughout the term of this contract.

If CONTRACTOR employs one or more workers as defined in ORS 656.027 and such workers are subject to the provisions of ORS Chapter 656, CONTRACTOR shall maintain currently valid workers' compensation insurance covering all such workers during the entire period of this contract.

8. **METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS:** All notices, bills and payments shall be made in writing and may be given by personal delivery, email or by mail. Notices, bills, and payments sent by email or mail should be addressed as follows:

COUNTY:

Contracts    Benton County Health Services    541-766-6037  
Contracts Office, Attn: Judy Blackburn  
PO Box 579  
Corvallis, Oregon 97339-0579  
[judy.a.blackburn@co.benton.or.us](mailto:judy.a.blackburn@co.benton.or.us)

Invoices    Benton County Health Department    541-766-6342  
Attn: Accounts Payable  
PO Box 3020  
Corvallis, OR 97339  
[Hdpurchasing@co.benton.or.us](mailto:Hdpurchasing@co.benton.or.us)

CONTRACTOR    [RESERVED]

and when so addressed, shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given by giving notice pursuant to this paragraph.

9. **TERMINATION:** At any time, with or without cause, COUNTY, in its sole discretion shall have the absolute right to terminate this agreement by giving written notice to CONTRACTOR. If COUNTY terminates pursuant to this paragraph, CONTRACTOR shall be entitled to payment for all services satisfactorily rendered and expenses incurred through the date of termination; provided, that there shall be deducted from such payment the amount of damage, if any, sustained by COUNTY due to any breach of the agreement by CONTRACTOR.

10. **OWNERSHIP OF WORK PRODUCT:** COUNTY shall be the owner of and shall be entitled to possession of all work products of CONTRACTOR that result from this contract ("the work products"). In addition, if any of the work products contain intellectual property of CONTRACTOR that is or could be protected by federal law, CONTRACTOR hereby grants COUNTY a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use all such work products, including but not limited to databases, templates, file formats, scripts, links, procedures, materials, training manuals and other information, designs, plans or works provided or delivered to COUNTY or produced by CONTRACTOR under this contract.

11. **NONDISCRIMINATION:** CONTRACTOR shall comply with all applicable federal, state and local laws, rules, and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability, sexual orientation, gender identity or source of income.

12. **STATUTORY AND REGULATORY COMPLIANCE:** CONTRACTOR shall comply with all federal, state and local laws, ordinances and regulations applicable to the work under this contract, including, without limitation, the applicable provisions of ORS chapters 279A, B and C, particularly 279C.500, 279C.510, 279C.515, 279C.520 and 279C.530, as amended. In addition, CONTRACTOR expressly agrees to comply with Title VI of the CIVIL RIGHTS ACT of 1964 and comparable state and local laws. CONTRACTOR shall also comply with Section V of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (Pub. Law No. 101-336), ORS 659A.142, ORS 659A.145, ORS 659A.400 to ORS 659A.406 and all regulations and administrative rules established pursuant to those laws. Contractor certifies that it is not disqualified or debarred from entering into this contract under ORS 279B.130, 279C.440 and/or any applicable Federal compliance requirements in accordance with 2 CFR part 180.



13. **EXTRA (CHANGED) WORK:** Only the Health Department Director or authorized Deputy Director may authorize extra work (and/or changed) work. The parties expressly recognize that other COUNTY personnel are not authorized to either order extra work (and/or changed) work or waive contract requirements. Failure of the CONTRACTOR to secure Health Department Director or authorized Deputy Director authorization for extra work shall constitute a waiver of any and all right to adjustment in the contract price or contract time due to such unauthorized extra work and the CONTRACTOR thereafter shall be entitled to no compensation whatsoever for the performance of such work.

CONTRACTOR further expressly waives any and all right or remedy by way of restitution and quantum merit for any and all extra work performed by CONTRACTOR without the express and prior written authorization of the Health Department Director

14. **CONFLICT OF INTEREST:** CONTRACTOR covenants 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. The CONTRACTOR further covenants that in the performance of this contract it shall not employ any person having any such interest.

15. **AUDIT:** CONTRACTOR shall maintain records to assure conformance with the terms and conditions of this agreement, and to assure adequate performance and accurate expenditures within the contract period. CONTRACTOR agrees to permit Benton County, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this agreement to assure the accurate expenditure of funds. CONTRACTOR shall notify COUNTY of any independent audit report of CONTRACTOR'S activities or finances prepared for CONTRACTOR and agrees to submit such reports to the Health Director upon request.

16. **GOVERNING LAW:** This contract shall be governed and construed by the laws of the State of Oregon.

17. **SEVERABILITY:** If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

18. **MERGER:** This writing and the attached exhibits constitute the entire and final contract between the parties. No modification of this agreement shall be effective unless and until it is made in writing and signed by both parties.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

[RESERVED]

BENTON COUNTY

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Charlie Fautin, Director Date  
Benton County Health Department

\_\_\_\_\_  
Title

Reviewed as to form:

\_\_\_\_\_  
Vance Croney Date  
Benton County Counsel

## Attachment A – CERTIFICATION OF INSURANCE REQUIREMENTS

Contractor shall at all times maintain in force at Contractor's expense for insurance noted below.

**Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide workers' compensation coverage in accordance with ORS Chapter 656 or CCB (Construction Contractors Board) for all subject workers. Contractor and all subcontractors of Contractor with one or more employees must have this insurance unless exempt under ORS 656.027. **Employer's Liability Insurance with coverage limits of not less than \$1,000,000 must be included. THIS COVERAGE IS REQUIRED.** If Contractor does not have coverage, and claims to be exempt, Contractor must indicate exemption within their Bid/Proposal submittal letter with qualified reasons for exemption, see ORS 656.027. Out-of-state Contractors with one or more employees working in Oregon in relation to this contract must have Workers' Compensation coverage from a state with extraterritorial reciprocity, or they must obtain Oregon specific Workers' Compensation coverage ORS 656.126.

**Professional Liability** insurance covering any damages caused by error, omission or any negligent acts of the Contractor, its subcontractors, agents, officers, or employees' performance under this Contract. **Combined single limit per occurrence shall not be less than \$2,000,000. Annual aggregate limit shall not be less than \$2,000,000.**

If this box is checked, the limits shall be \$1,000,000 per occurrence and \$1,000,000 in annual aggregate.

Required by County  Not Required by County

**Commercial General Liability** insurance with coverage satisfactory to the County on an occurrence basis. **Combined single limit shall not be less than \$2,000,000 per occurrence for Bodily Injury and Property Damage and annual aggregate limit for each shall not be less than \$2,000,000.** Coverage may be written in combination with Automobile Liability Insurance (with separate limits). **Annual aggregate must be on a "per project basis".**

If this box is checked, the limits shall be \$1,000,000 per occurrence and \$2,000,000 in annual aggregate.

If this box is checked, the limits shall be \$5,000,000 per occurrence and \$5,000,000 in annual aggregate.

Required by County  Not Required by County

**Automobile Liability** covering all owned, non-owned, or hired vehicles. If there are no owned autos this coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). **Combined single limit per accident shall not be less than \$2,000,000.**

If this box is checked, the limits shall be \$1,000,000 per accident.

If this box is checked, the limits shall be \$5,000,000 per accident.

Required by County  Not Required by County

**Property of Others in Transit (Cargo)** covering all County owned property / equipment being hauled by contractor. **Limit per occurrence shall not be less than \$100,000.**

Required by County  Not Required by County

Coverage must be provided by an insurance company authorized to do business in Oregon or rated by A.M. Best's Insurance Rating of no less than A-VII or County approval. Contractor's coverage will be primary in the event of loss. **Contractor shall furnish a current Certificate of Insurance to the County.** Contractor is also responsible to provide renewal Certificates of Insurance upon expiration of any of the required insurance coverage.

Contractor shall immediately notify the County of any change in insurance coverage. The certificate shall also state the deductible or retention level. The County must be listed as an Additional Insured by endorsement of any General Liability Policy on a primary and non-contributory basis. Such coverage will specifically include products and completed operations coverage.

The Certificate shall state the following in the description of operations: "Additional Insured Form (include the number) attached. The form is subject to policy terms, conditions and exclusions". A copy of the additional insured endorsement shall be attached to the certificate of insurance. If requested complete copies of insurance policies shall be provided to the County.

**Certificate holder should be: Benton County, Attn: Health Services Contracts Office, PO Box 3020, Corvallis OR 97339.** Certificates of Insurance can be faxed to 541-766-6352 or emailed to the Health Services Contracts office at: [judy.a.blackburn@co.benton.or.us](mailto:judy.a.blackburn@co.benton.or.us)

**ATTACHMENT B  
SCOPE OF WORK**

**[RESERVED FOR NEGOTIATION]**

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**ATTACHMENT C**  
**SPECIAL PROVISIONS (FEMA DISASTER PROVISIONS)**

This Attachment shall apply only to those contracts wherein FEMA disaster reimbursements are sought and the services, equipment or material provided by the CONTRACTOR under this agreement are used or employed by COUNTY in response to a FEMA reimbursing event. If no such event occurs during the term of this agreement, these terms shall not apply.

1. Administrative, Contractual, or Legal Remedies

**For all contracts greater or equal to \$250,000**, which is the current Simplified Acquisition Threshold set by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council pursuant to 41 U.S.C. § 1908, CONTRACTOR agrees to be bound by the administrative, contractual, or legal remedies set forth in this agreement and, the following:

**Termination for Default.**

a. **Default.** If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the COUNTY may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the COUNTY, the COUNTY may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the COUNTY may procure similar goods or services in a manner and upon the terms deemed appropriate by the COUNTY. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. **CONTRACTOR'S duties.** Notwithstanding termination of the Contract and subject to any directions from the COUNTY, the CONTRACTOR shall take timely and reasonable necessary action to protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest.

c. **Compensation.** Payment for completed goods and services delivered and accepted by the COUNTY shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the COUNTY. If the parties fail to agree, the COUNTY shall set an amount. The COUNTY may withhold from amounts due the CONTRACTOR such sums as the COUNTY deems to be necessary to protect the COUNTY against loss because of outstanding liens or claims and to reimburse the COUNTY for the excess costs expected to be incurred by the COUNTY in procuring similar goods and services.

d. **Excuse for nonperformance or delayed performance.** The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the COUNTY within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the COUNTY shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the COUNTY under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

e. **Erroneous termination for default.** If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this

paragraph, or that the delay was excusable under the provisions of the contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the contract.

Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

2. Termination for Cause and for Convenience

**For all contracts in excess of \$10,000**, CONTRACTOR agrees to be bound by the termination for cause and for convenience provisions set forth in the contract and subsection 1 above. CONTRACTOR acknowledges the contract has no for-cause termination provision.

3. Equal Employment Opportunity

**If this contract is for construction**, CONTRACTOR agrees, pursuant to the requirements provided in 2 C.F.R. Part 200, Appendix II, and 41 C.F.R. § 60-1.4(b), as follows:

a. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONTRACTOR's legal duty to furnish information.

d. CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965 [Part I - Nondiscrimination in Government Employment; Part II - Nondiscrimination in Employment by Government contractors and Subcontractors; Part III - Nondiscrimination Provisions in Federally Assisted Construction Contracts], and the rules, regulations, and relevant orders of the Secretary of Labor.

f. CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. CONTRACTOR will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### 4. Compliance with Davis-Bacon Act

a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. CONTRACTOR shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

#### 5. Compliance with the Copeland "Anti-Kickback" Act

a. Contractor. CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. CONTRACTOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

## 6. Contract Work Hours and Safety Standards Act

a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek 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 forty hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph a of this section CONTRACTOR and any subcontractor responsible therefor 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 paragraph a of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph a of this section.

c. Withholding for unpaid wages and liquidated damages. The COUNTY 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 moneys payable on account of work performed by 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 paragraph b of this section.

d. Subcontracts. CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph a through d of this section 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 paragraphs a through d of this section.

## 7. Rights to Interventions Made Under a Contract

If the FEMA award meets the definition of “funding agreement” under 37C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Interventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F).

8. Clean Air Act and Federal Water Pollution Control Act

- a. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. CONTRACTOR agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- d. CONTRACTOR agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- e. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

6. Energy Efficiency

To the extent applicable to this contract, CONTRACTOR agrees to comply with all applicable mandatory standards and policies relating to energy efficiency of the State.

7. Excluded Parties List System

CONTRACTOR understands and agrees that if CONTRACTOR is listed on the government-wide Excluded Parties List System in the System for Award Management at [www.SAM.gov](http://www.SAM.gov) as suspended or debarred, CONTRACTOR cannot be awarded this contract.

8. Byrd Anti-Lobbying Amendment

**If this contract is for an award of \$100,000 or more**, CONTRACTOR acknowledges and agrees the written declaration included at the end of this document is submitted on its behalf. CONTRACTOR also agrees to disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

9. Recovered and Recycled Materials

To the extent applicable to this contract, CONTRACTOR agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 requires CONTRACTOR to use only items, designated in guidelines of the Environmental Protection Agency at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.

10. Access to Records. The following access-to-records requirements apply to this contract:

- a. CONTRACTOR agrees to provide to COUNTY, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. CONTRACTOR agrees to provide the FEMA Administrator or the Administrator's authorized representative's access to construction or other work sites pertaining to the work being completed under the contract.



d. In compliance with the Disaster Recovery Act of 2018, COUNTY and CONTRACTOR acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United

11. DHS Seals and Logos. CONTRACTOR is not permitted to use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

12. False Claims and Statements. CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to CONTRACTOR's actions pertaining to this contract.

**Byrd Anti-Lobbying Amendment Certification  
for Contracts, Grants, Loans, and Cooperative Agreements**

CONTRACTOR certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By entering into this agreement, CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.