

business in the State of Oregon. If Vendor is self-insured under the laws of the State of Oregon, Vendor shall provide appropriate declarations of coverage.

- c. Continuation of Coverage: There shall be no cancellation, material change, reduction or exhaustion of aggregate limits, or intent not to renew insurance coverage without Vendor providing ten (10) days written notice to COUNTY. Should any policy be canceled before final payment by Lane County to Vendor and should Vendor fail to immediately procure other insurance as specified, Lane County reserves the right to procure such insurance and to deduct the cost thereof from any sum due Vendor under this contract.
 - d. Responsibility for Payment of Damages: Nothing contained in these insurance requirements is to be construed as limiting the extent of the Vendor's responsibility for payment of damages resulting from Vendor's operation under this contract.
- C-28. **Indemnity:** Vendor agrees to indemnify, defend, and hold COUNTY, its Commissioners, agents, officers, and employees harmless from all damages, losses and expenses including but not limited to attorney fees and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the negligence or wrongful misconduct of Vendor, its subcontractors, employees or agents in performing or failing to perform obligations covered by this agreement. COUNTY shall give Vendor prompt, written notice of any such claim, proceeding or suit and shall reasonably cooperate with Vendor in its defense or settlement of such claim or suit. Vendor shall not be required to indemnify the COUNTY to the extent the damage, loss or expense is caused by the COUNTY'S negligent or wrongful misconduct.
- C-29. Intentionally omitted.
- C-30. **Force Majeure:** Neither party will be liable for its non-performance or delayed performance if caused by a Force Majeure, meaning an event, third-party, or circumstance that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of the government, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, quarantine restrictions, unusually severe weather or any other similar cause. In every case of Force Majeure, the delay must be beyond the control and without the fault or negligence of the Vendor or the COUNTY. If the delays are caused by the default of a sub-contractor, and if such default rises out of causes beyond the control of both the Vendor and its sub-contractor, and without the fault or negligence of any of them, the Vendor will not be liable for non-performance or delays, unless the supplies or services to be furnished by their sub-contractors were obtainable from other sources in sufficient time to permit the Vendor to meet the required schedule.
- Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly after it discovers the Force Majeure. If a Force Majeure occurs, the parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.
- C-31. **Limitation of Liability:** Except for indemnification amounts for patent and copyright infringement, for personal injury, death, or property damage to the extent caused by Vendor, Vendor's total monetary liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the contract amount, (except as provided in *PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-29, Liquidated Damages*). Any liability of the COUNTY shall be limited to the lesser of the following amounts: this contract amount, Oregon Tort Claims Act, or Oregon Constitution, Article XI, Section 10, Limitations. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT NEITHER PARTY WILL BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF**

SOFTWARE, OR THE PERFORMANCE OF OBLIGATIONS BY EITHER PARTY PURSUANT TO THIS AGREEMENT. This Limitation of Liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than two years after the accrual of such cause of action.

Vendor is not an officer, employee, or agent of COUNTY as those terms are used in ORS 30.265. Public liability and property damage insurance will be required if so specified in *PART IV, CONTRACT & INSURANCE COVERAGES REQUIRED*, and in accordance with the requirements set forth therein.

- C-32. **Waiver:** Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (i) a future or continuing waiver of that same right or power, or (ii) the waiver of any other right or power.
- C-33. **Non-Assign:** This Contract shall not be sub-contracted or assigned without the prior written consent of all parties hereto.
- C-34. **Successors in Interest:** The provision of this contract shall be binding upon and shall inure to the benefit of the parties to the contract and their respective successors and assigns.
- C-35. **Award to Foreign Vendor:** If the amount of this contract exceeds \$10,000, and if Vendor is not domiciled in or registered to do business in the State of Oregon, Vendor shall promptly provide all information relative to this contract required by the Oregon Department of Revenue to that Department. The COUNTY shall withhold final payment under this contract until Vendor has met this requirement.
- C-36. **Maintenance Services:** During the term of this Agreement, Vendor shall provide the following maintenance services for equipment and software:
- a. Provision and/or installation of corrections of substantial defects in the equipment or software so that they will operate as described in the parties agreement;
 - b. Provision and/or installation of periodic updates of the software incorporating: (i) corrections of any substantial defects, (ii) fixes of any minor bugs, and (iii) at the discretion of the Vendor and subject to the maintenance contract, enhancements, new functionality, later versions and supplements;
 - c. Provision of any system documentation supporting a maintenance service performed; and
 - d. Telephone support for COUNTY problem/request reporting and resolution; and onsite support at the discretion of the Vendor.
 - e. Any other provisions agreed to by the parties.
- C-37. **Conditions, Benefits:** Other political subdivisions and public agencies may use this competitive selection process and contract terms, with any modifications to reflect their own liability standards and limitations, as a basis for executing a separate agreement in their own name with the contractor. As a condition to this use, other political subdivisions and public agencies shall be fully liable for the appropriateness of the decision to use this process or contract provisions. Any software, materials, equipment or services sold by Vendor to such agencies shall be ordered by, delivered to, and paid by the other political subdivision or public agency. By acting to contract with another political subdivision or public agency, Contractor agrees that Lane County, its Commissioners, agents, employees and officers are expressly indemnified and held harmless by Contractor from any claim arising out of the use of the County's competitive process or out of the

performance or failure to perform contractual obligations of the contractor, political subdivision, and public agency.

- C-38. **Authority To Execute Agreement:** Each party represents to the other that (i) it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; (ii) the person executing this Agreement on its behalf has the authority to do so; (iii) upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and (iv) the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the party.
- C-39. **Survivability:** Termination shall not affect the rights and obligations each party owed to the other prior to the termination date. In addition, the following provisions shall survive the termination or expiration of this agreement: Limitation of Liability, Disputes, Preservation of Vendor's proprietary rights, license of software as provided in *PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-16, Source Code*; confidentiality and non-disclosure; patent, copyright, infringement; indemnity, hold harmless, and defense; legal remedies and damage limitations; and maintenance as provided in *PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-36, Maintenance Services*.
- C-40. **Severability:** If any provision of this contract or any portion of a provision, is declared by a court of competent jurisdiction to be illegal, in conflict with any law, invalid or otherwise unenforceable, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.
- C-41. **Termination:** This Agreement shall continue through the contract term until terminated as provided below. The parties may terminate this agreement, or any part of it, by mutual agreement or as provided in a. through d. below.
- a. Termination by COUNTY for Convenience. COUNTY may terminate this agreement, in whole or in part, for any or no reason on sixty (60) days written notice to Vendor. In the event of such termination for convenience, COUNTY shall immediately cease use of any software or other products provided by Vendor and shall comply with the obligations upon termination set forth in *PART IV, CONTRACT & INSURANCE REQUIREMENTS Section C-41D, Obligations on Termination*. Subject to applicable limitations of liability as in Section C-31, COUNTY shall be liable for reasonable costs directly related to such termination. Vendor, upon notification, shall take all reasonable steps to minimize termination costs. If Vendor possesses any advance payments made by COUNTY for services, software, products or equipment not yet provided, any sums owed by COUNTY shall be credited, and Vendor shall pay COUNTY any excess advance payments. The parties shall comply with Section C-41.d.i. & d. ii.
 - b. Termination by COUNTY for Cause. If Vendor fails to achieve final Production acceptance in accordance with this Agreement or otherwise breaches a material obligation under this Agreement, COUNTY may consider Vendor to be in default, unless COUNTY or a Force Majeure causes such failure. If COUNTY asserts a default, COUNTY will give Vendor written and detailed notice of the default and Vendor will have thirty (30) days thereafter to cure the default. If after following these default procedures, the Vendor has not cured the default, COUNTY may terminate this Agreement, in whole or in part. It may also choose to extend the period to cure if the vendor, within the thirty (30) day cure period, both provides the COUNTY with a plan of action acceptable to COUNTY and commences execution of the plan. COUNTY may withhold all monies due and payable to Vendor, under this agreement, until COUNTY accepts such a plan. These remedies shall be in addition to, and cumulative of, any other remedy available to COUNTY, and the exercise of this remedy by COUNTY shall not prejudice or impair the availability to COUNTY of any other remedy at law or in equity for breach of this Contract, subject to any contractual limitation of liability.

- c. Termination by Vendor. If COUNTY fails to pay any amount when due under this Agreement or otherwise breaches a material obligation under this Agreement, Vendor may consider COUNTY to be in default, unless Vendor or a Force Majeure causes such failure. If Vendor asserts a default, it will give COUNTY written and detailed notice of the default and COUNTY will have thirty (30) days thereafter to cure any monetary default (including interest). If after following these procedures, the COUNTY has not cured the default, the Vendor may terminate this Agreement. Vendor may also choose to extend the period to cure if the COUNTY, within the thirty (30)-day cure period, both provides the Vendor with a plan of action acceptable to the Vendor and commences execution of the plan. Vendor may stop work until it accepts the plan of action to cure a non-monetary default by COUNTY. This remedy shall be in addition to, and cumulative of, any other remedy available to Vendor, and the exercise of this remedy by Vendor shall not prejudice or impair the availability to Vendor of any other remedy at law or in equity for breach of this Contract, subject to any contractual limitations of liability.
- d. Obligations on Termination. Upon termination pursuant to a. through c. above, COUNTY expressly acknowledges and agrees that within thirty (30) calendar days following such termination, COUNTY shall certify and warrant to Vendor, that: (i) it has destroyed or returned to Vendor all and every part of the software and documentation and all copies thereof. Upon termination, Vendor expressly acknowledges and agrees that within thirty calendar days following such termination, Vendor shall certify and warrant to COUNTY, that it has destroyed or returned to COUNTY all and every part of the confidential materials and all copies thereof.

Nothing in this Agreement shall prohibit the COUNTY from continuing to possess and use software, documentation or other equipment which are not subject of the partial termination.

- e. Payment/Financial Obligations upon Termination. Upon termination, COUNTY shall pay to Vendor all amounts that have actually accrued or which are owing to Vendor as of the date of such termination in accordance with the schedules in this agreement and reasonable business judgment. In addition, Vendor shall reimburse COUNTY for any advance payments for services not rendered. The parties shall agree on a mutual settlement regarding any other payments owed either COUNTY or Vendor.

When the Agreement is terminated as in paragraphs C-41. a., b., or c. above, the parties are responsible for performing their obligations up to the date of termination. Vendor shall deliver all software, products, equipment, and services that it is required to provide up to the date of termination. COUNTY shall pay Vendor all amounts actually owed to Vendor as of the date of the termination, in accordance with the schedules in the Agreement.

- C-42. **Good Faith Attempt to Resolve:** The parties agree to make good faith effort to resolve any dispute prior to or during the default process.

- C-43. **Disputes:** Vendor and COUNTY will attempt to settle any claim or controversy between them arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. The respective Project Managers will confer and attempt to settle the dispute. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary. Absent a dispute handled in accordance with *PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-41, Termination*, if cooperative efforts fail, the dispute will be mediated by a mediator chosen jointly by Vendor and COUNTY within thirty days after notice by one of the parties demanding mediation on the conditions that: (i) The location shall be in Eugene, Oregon, (ii) Each party shall bear their own costs, witness fees, and attorneys fees, and (iii) Joint costs for the process (e.g. filing and mediation costs) shall be borne equally. Vendor and COUNTY will not unreasonably withhold consent to the selection of a mediator. The parties may postpone mediation until they have completed any mutually agreed upon, specified, and limited discovery about the dispute.

Any claim relating to intellectual property and any dispute that cannot be resolved between the parties through negotiation or mediation within two months after the date of the initial demand for mediation may then be submitted by either party to a court of competent jurisdiction in Lane County, Oregon unless otherwise agreed. Each party consents to jurisdiction over it by such a court. The use of mediation will not be considered under the doctrine of laches, waiver, or estoppel to affect adversely the rights of either party. Either party may resort to the judicial proceedings described in this section before the expiration of the two-month, or other agreed, period if (i) good faith efforts to resolve the dispute under these procedures have been unsuccessful, or (ii) interim relief from the court is necessary to prevent serious and irreparable injury to such party or any of its affiliates, agents, employees, officers, suppliers, or sub-contractors.

- C-44. **Notices:** Whenever under this Contract one party is required or permitted to give notice to the other, such notice shall be deemed given when received by personal delivery, courier or facsimile; or up to three (3) business days after the date mailed by United States mail, certified mail, return receipt requested, postage prepaid, and addressed as follows:

In the case of Vendor:

In the case of COUNTY:

David Barbero
Administrative Analyst
125 East Eighth Avenue
Eugene OR, 97401

Phone:541-682-4032
Fax:541-682-2345

- C-45. **Headings and Section References, Construction:** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.
- C-46. **Entire Agreement:** This Contract, including RFP IS2005-5-01 , as modified by the Vendor's Proposal, and the Appendices attached hereto constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous representations, understandings or agreements, whether oral or written, relating to the subject matter hereof. All prior or contemporaneous representations, understandings or agreements, whether oral or written, that are not expressly set forth within the four corners of this Contract are hereby deemed waived, superseded and abandoned. The preprinted terms and conditions found on any COUNTY purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each party signs such document, unless explicitly otherwise agreed.
- C-47. **Modifications and Amendments:** This Agreement may be altered, amended, or modified only by a written instrument signed by an authorized representative of each party.

IN WITNESS WHEREOF, the parties have executed this contract on this _____ day of _____, 20 ____.

Company Name.

Lane County, Oregon

By: _____
Signature

By: _____
Signature

Print or Type Name

Print or Type Name

Title

County Administrator
Title

Business ID Number

Date

Date

APPROVED AS TO FORM

Date _____ Lane County

OFFICE OF LEGAL COUNSEL

LANE MANUAL (*verify current version*)

CHAPTER 21.130 STANDARD CONTRACT PROVISIONS

The following standard public contract clauses shall be included expressly or by reference where appropriate in every contract of the COUNTY.

(1) Contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in the contract, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

(2) Contractor shall pay promptly all contributions or amounts due to the State Industrial Accident Fund and the State Unemployment Compensation Fund from contractor or any subcontractor in connection with the performance of the contract.

(3) Contractor shall not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished, shall assume responsibility for satisfaction of any lien so filed or prosecuted and shall defend against, indemnify and hold County harmless from any such lien or claim.

(4) Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(5) For public improvement and construction contracts only, if contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the contractor or its surety from the obligation with respect to any unpaid claim. If the County is unable to determine the validity of any claim for labor or services furnished, the County may withhold from any current payment due contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by the contractor or the County. There shall be no final acceptance of the work under the contract until all such claims have been resolved.

(6) Contractor shall make payment promptly, as due, to any person, co-partnership, association or corporation furnishing medical, surgical, hospital or other needed care and attention, incident to sickness or injury, to the employees of contractor, of all sums which the contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing payment for such service.

(7) With certain exceptions listed below, contractor shall not require or permit any person to work more than 10 hours in any one day, or 40 hours in any one week except in case of necessity, emergency, or where public policy absolutely requires it, and in such cases the person shall be paid at least time and a half for:

(a) All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday, or

(b) All overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday, and

(c) All work performed on the days specified in ORS 279B.020(1) for non-public improvement contracts or ORS 279C.540(1) for public improvement contracts.

For personal/professional service contracts as as designated under ORS 279A.055, instead of (a) and (b) above, a laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Sections 201 to 209, from receiving overtime.

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Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression. For contracts other than construction or public improvements, this subsection (7) does not apply to contracts for purchase of goods or personal property.

Contractor must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by

employees, of the number of hours per day and days per week that the employees may be required to work.

(8) The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the applicable prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.800 to ORS 279C.850. For projects covered by the federal Davis-Bacon Act (40 USC 276a), contractors and subcontractors shall pay workers the higher of the state or federal prevailing rate of wage.

(9) The contractor, its subcontractors, if any, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, or otherwise be exempt under ORS 656.126.

(10) As to public improvement and construction contracts, Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. A list of entities who have enacted such laws or regulations is found in the Oregon Attorney General's Model Public Contract Rules Manual, OAR 137-030-0010, Commentary 4. If new or amended statutes, ordinances, or regulations are adopted, or the contractor encounters a condition not referred to in the bid document not caused by the contractor and not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the prevention of environmental pollution or the preservation of natural resources, both the County and the contractor shall have all the rights and obligations specified in ORS 279C.525 to handle the situation.

(11) The contract may be canceled at the election of County for any substantial breach, willful failure or refusal on the part of contractor to faithfully perform the contract according to its terms. The County may terminate the contract by written order or upon request of the contractor, if the work cannot be completed for reasons beyond the control of either the contractor or the County, or for any reason considered to be in the public interest other than a labor dispute, or by reason of any third party judicial proceeding relating to the work other than one filed in regards to a labor dispute, and when circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work. In either case, for public improvement contracts, if the work is suspended but the contract not terminated, the contractor is entitled to a reasonable time extension, costs and overhead per ORS 279C.655. Unless otherwise stated in the contract, if the contract is terminated, the contractor shall be paid per ORS 279C.660 for a public improvement contract.

(12) If the County does not appropriate funds for the next succeeding fiscal year to continue payments otherwise required by the contract, the contract will terminate at the end of the last fiscal year for which payments have been appropriated. The County will notify the contractor of such non-appropriation not later than 30 days before the beginning of the year within which funds are not appropriated. Upon termination pursuant to this clause, the County shall have no further obligation to the contractor for payments beyond the termination date. This provision does not permit the County to

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terminate the contract in order to provide similar services or goods from a different contractor.

(13) By execution of this contract, contractor certifies, under penalty of perjury that:

(a) To the best of contractor's knowledge, contractor is not in violation of any tax laws described in ORS 305.380(4), and

(b) Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

(14) Contractor agrees to prefer goods or services that have been manufactured or produced in this State if price, fitness, availability or quality are otherwise equal.

(15) Contractor agrees to not assign this contract or any payments due hereunder without the proposed assignee being first approved and accepted in writing by County.

(16) Contractor agrees to make all provisions of the contract with the County applicable to any subcontractor performing work under the contract.

(17) The County will not be responsible for any losses or unanticipated costs suffered by contractor as a result of the contractor's failure to obtain full information in advance in regard to all conditions pertaining to the work.

(18) All modifications and amendments to the contract shall be effective only if in writing and executed by both parties.

(19) The contractor certifies he or she has all necessary licenses, permits, or certificates of registration (including Construction Contractors Board registration or Landscape Contractors Board license, if

applicable), necessary to perform the contract and further certifies that all subcontractors shall likewise have all necessary licenses, permits or certificates before performing any work. The failure of contractor to have or maintain such licenses, permits, or certificates is grounds for rejection of a bid or immediate termination of the contract.

(20) Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the County. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights. Data which is delivered under the contract, but which does not originate therefrom shall be transferred to the County with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided that such license shall be limited to the extent which the contractor has a right to grant such a license. The contractor shall exert all reasonable effort to advise the County, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The County shall receive prompt written notice of each notice or claim of copyright infringement received by the contractor with respect to any data delivered under this contract. The County shall have the right to modify or remove any restrictive markings placed upon the data by the contractor.

(21) If as a result of this contract, the contractor produces a report, paper, publication, brochure, pamphlet or other document on paper which uses more than a total 500 pages of 8 1/2" by 11" paper, the contractor shall conform to the Lane County Recycled Paper Procurement and Use policy, LM 2.440 through 2.448, by using recycled paper with at least 25% post-consumer content which meets printing specifications and availability requirements.

(22) The Oregon Standard Specifications for Construction adopted by the State of Oregon, and the Manual on Uniform Traffic Control Devices, each as is currently in 21-27 WD I/ma/00035.Chapter21/T 21.135 Lane Manual 21.139

effect, shall be applicable to all road construction projects except as modified by the bid documents.

(23) As to contracts for lawn and landscape maintenance, the contractor shall salvage, recycle, compost or mulch yard waste material in an approved site, if feasible and cost-effective.

(24) As to public improvement contracts for demolition, the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

(25) When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the County will make final payment on the contract.

Mutual Non-Disclosure Agreement

This Non-Disclosure and Confidentiality Agreement (the "Agreement") is made and entered into by and between ____ [company name] ____ ("Contractor"), a ____ [state of operation] ____ corporation, having its principal place of business at ____ [street address, City, State, Zip] ____, ("____ [company short name] ____") and Lane County, Oregon ("County"), an entity having its principal place of business at 125 East Eighth Avenue, Eugene, Oregon 97401.

DEFINITION

"Confidential Information" includes, but is not limited to, know-how, trade secrets, tools, methods, methodologies, techniques, designs, specifications, computer source code, customer lists, pricing information, marketing plans, personnel information, financial information and business strategies, drawings, data, software, together with other information which, a reasonable person would conclude, is intended to remain confidential, due to its nature or the circumstances under which it is disclosed, and any other non-public information that either party designates as proprietary and/or confidential pursuant to the terms herein. For purposes of this Agreement, Confidential Information does not include protected health information as defined by the Health Insurance Portability and Accountability Act (HIPAA). Any applicable HIPAA confidentiality requirements will be covered under a separate agreement.

1. Lane County is a public entity and is subject to all public records disclosure requirements of Oregon Public Records Law.
2. It is anticipated that each of the parties may disclose to the other various Confidential Information. Information that a party reasonably believes meets an Oregon Public Records exemption must be clearly and prominently labeled "Confidential Information" in order to be deemed proprietary.
3. Each party shall be a "Disclosing Party" with respect to Confidential Information, which that party discloses to the other and shall be a "Receiving Party" with respect to Confidential Information which that party receives from the other.
4. In consideration of the disclosure of Confidential Information, a confidential relationship is established between the parties.
5. The County is acting through its Information Services Department. The County's use, as described in this Agreement, is intended to include County employees and agents.
6. This agreement is intended only to facilitate the evaluation of information technology products, services, documents, and information during consideration of a future purchase, or for support of products and/or services already purchased. The County may be requested to disclose limited data which it maintains as a public entity in order for necessary evaluation or support functions to be accomplished. Unless specified otherwise in writing by the County, all County data stored on County computer systems accessible to Contractor in the performance of these activities shall be considered Confidential Information and subject to the disclosure restrictions stated within this Agreement. It is not the intent of the County to disclose any medical record information about County clients as part of any evaluation or use of information technology products and services.

7. A Disclosing Party shall not designate as Confidential Information any materials or information which the Disclosing Party does not with reasonable belief consider to be proprietary and/or confidential.
8. With respect to Confidential Information that the County provides to Contractor under this Agreement, Contractor shall hold the Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information. With respect to Confidential Information that Contractor provides under or in contemplation of this Agreement, County's obligation to maintain confidentiality is subject to any disclosure obligations of Oregon Public Records Law, and if entitled to confidentiality, County shall: (a) restrict disclosure and use of the Confidential Information solely to those employees (including contract employees and consultants) of such parties with a need-to-know, and not disclose it to any other parties, (b) advise those employees and consultants of their obligation with respect to the Confidential Information, (c) not copy, duplicate (except as needed for backup, testing, training, system upgrades), or reverse engineer or compile anything provided hereunder, and (d) the County shall use Confidential Information provided by Contractor only for the purposes set forth in this Agreement. If County receives a request for disclosure of information labeled confidential by Contractor pursuant to Oregon Public Records Law or a subpoena, County will provide notice to Contractor before a response is due, and it shall be Contractor's responsibility to establish that such information is exempt from disclosure. Contractor shall defend, indemnify, and hold County harmless from any claim or administrative appeal, including costs, expenses, and any attorneys fees, related to a request to disclose information Contractor has labeled as "Confidential Information".
9. Upon the request of the Disclosing Party, the Receiving Party shall promptly deliver to the Disclosing Party any and all documents and Information, without retaining any copies or excerpts thereof, that contain or relate to the Disclosing Party's proprietary and confidential Information.
10. Nothing in this Agreement shall be construed to grant to the Receiving Party any ownership or other proprietary interest in the Confidential Information. The Receiving Party agrees that it does not acquire any title, ownership, or other intellectual property right or license under this Agreement. Nothing in this Agreement shall be construed as an obligation by either party to enter into a purchase contract, subcontract or other business relationship with the other party.
11. A Receiving Party has no obligation with respect to any Confidential Information disclosed hereunder that: (a) was rightfully in Receiving Party's possession before receipt from Disclosing Party other than through prior disclosure by Disclosing Party; or (b) is or becomes a matter of general public knowledge through no breach of this Agreement; or (c) is rightfully received by Receiving Party from a third party without an obligation of confidentiality; or (d) is independently developed by Receiving Party; or (e) is disclosed to third parties by the disclosing party without restriction; or (f) is disclosed under operation of law, including Oregon Public Records law, governmental regulation, or court order, provided Receiving Party first gives Disclosing Party notice and a reasonable opportunity to secure confidential protection of such Confidential Information.
12. A Receiving Party shall not publicly disseminate evaluations or summaries of the Confidential Information of Disclosing Party without Disclosing Party's review of such evaluations or summaries and written authorization for their dissemination. All materials disseminated with such authorization shall bear the Disclosing Party's copyright notice and any other markings necessary to protect the Confidential Information.
13. Neither party will, without the prior written consent of the other and such approvals, governmental or other, as may be required, use or transmit, directly or indirectly, the Information or any portion thereof outside the United States.

14. This agreement may not be assigned by either party without the prior written consent of the other.
15. The term of this agreement shall be two (2) years from the date entered into unless subsequently incorporated, by mutual agreement, into the parties' purchase contract. The parties may extend this agreement, including incorporating any applicable changes, if a purchase contract is executed within two (2) years from the date entered into unless the parties' agree otherwise. This Agreement may also be terminated by either party for convenience upon thirty (30) days written notice. Termination of this Agreement for any reason shall not relieve a Receiving Party of its obligations hereunder, and all obligations under this paragraph, and paragraphs 1, 4, 8, 9, 11, 12, 13, 15, 16, 17, 18, 19, 20 shall survive the termination of this Agreement.
16. Except as otherwise expressly agreed by the parties in writing, upon termination of this Agreement, a Receiving Party shall (a) immediately cease using the Confidential Information of Disclosing Party, (b) promptly return to Disclosing Party all media received from Disclosing Party which contain the Confidential Information of Disclosing Party and destroy all other copies of such Confidential Information, and (c) promptly certify in writing Receiving Party's compliance with the terms of this Article.
17. Contractor agrees to indemnify, defend, and hold County, its Commissioners, agents, officers, and employees harmless from all damages, losses and expenses and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the negligence or wrongful misconduct of Contractor, its subcontractors, employees or agents in performing or failing to perform obligations covered by this agreement.
18. Subject to the limitations of the Oregon Tort Claims Act and Article XI, Section 10 of the Oregon Constitution, County agrees to indemnify, defend, and hold Contractor, its agents, officers, and employees harmless from all damages, losses and expenses and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the negligence or wrongful misconduct of County, its officers, agents, or employees in performing or failing to perform obligations covered by this agreement.
19. This Agreement supercedes any prior oral or written understanding with respect to the exchange and protection of confidential information. Except if the parties mutually agree to incorporate this agreement into a purchase contract, this Agreement contains the entire understanding of the parties with respect to its subject matter. In such case, any additional terms related to exchange and protection of confidential information that are included in a purchase contract shall be binding. No modification, amendment, or waiver thereof shall be effective unless in writing and signed by both parties.
20. This Agreement shall be governed in all respects by the laws of the State of Oregon. The parties agree to the exclusive jurisdiction of the courts of the State of Oregon, and specifically agree that any action or proceeding involving a claim arising from this agreement must be brought in the appropriate court in Lane County, Oregon.
21. The provisions of Lane Manual 21.130, setting forth standard public contracting provisions, are hereby incorporated by this reference.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives.

Company Name.

Lane County, Oregon

By: _____
Signature

By: _____
Signature

Print or Type Name

Print or Type Name

Title

County Administrator
Title

Business ID Number

Date

Date

Software License Agreement

Name of Company: _____ ("Licensor") and Lane County, Oregon ("Licensee") hereby enter into this Software License Agreement. For good and valuable consideration, the parties agree as follows:

Grant of License and Right to Use

Licensor retains exclusive title and ownership of all copies of the Software licensed under this Agreement and hereby grants to Licensee a personal, non-exclusive, non-transferable, royalty free, worldwide license in perpetuity to use the Software and related Documentation pursuant to the License terms within this Agreement. This license is granted to Lane County for the purposes of supporting the Regional Backup Solution.

Permitted Uses

Customer may use the Software solely for the purpose of operating the Regional Backup Solution, and for such other additional purposes authorized in the Lane County Purchase Contract of which this software license is a part. Customer is authorized to make reasonable copies of the Software for backup, testing, training, system upgrades, and/or archival purposes.

Ownership

Title to all copies of Software will not pass to Licensee at any time but remains vested exclusively in Licensor. Licensor and/or Licensor's suppliers own and retain all of their proprietary rights in any form concerning the Software and Documentation, including all rights in patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, and other intellectual properties (including any corrections, bug fixes, enhancements, updates, or modifications to or derivative works from the Software whether made by Licensor or another party). Nothing in this Agreement is intended to restrict the proprietary rights of Licensor and/or Licensor's suppliers or to grant by implication or estoppel any proprietary rights. All intellectual property developed, originated, or prepared by Licensor in connection with providing to Licensee Software, Products, or related services remain vested exclusively in Licensor, and this Agreement does not grant to Licensee any shared development rights of intellectual property. This Agreement does not involve any software that is a "work made for hire." County owns title to physical media for the software as well as all data entered into the software, and nothing in this Agreement is intended to restrict the ownership rights of the County to the physical media for the software or the data entered into the software.

Prohibitions

Customer shall not sell, rent, lease, sub-license, lend, time-share or transfer, in whole or in part, or provide unlicensed third parties access to the prior or present versions of the Software, any updates, or to Customer's other rights under this Agreement. Customer shall not reverse engineer, de-compile, or disassemble the Software. Customer shall not alter or modify the Software except as authorized by this Agreement. Customer shall not make additional copies of the Software beyond those necessary for purposes stated by this agreement. Customer shall not remove or obscure any of the copyright or trademark notices. Customer may not copy the Documentation that accompanies the Software. Except as provided herein, no right is granted for the use of Software directly by any third person.

Confidentiality

With respect to Confidential Information that Contractor provides under or in contemplation of this Agreement, County's obligation to maintain confidentiality is subject to any disclosure obligations of Oregon Public Records Law, and if entitled to confidentiality, County shall: (a) restrict disclosure and use of the Confidential Information solely to those employees (including contract employees and consultants) of such parties with a need-to-know, and not disclose it to any other parties, (b) advise those employees and consultants of their obligation with respect to the Confidential Information, (c) not copy, duplicate (except as needed for backup, testing, training, system upgrades),

or reverse engineer or compile anything provided hereunder, and (d) the County shall use Confidential Information provided by Contractor only for the purposes set forth in this Agreement. If County receives a request for disclosure of information labeled confidential by Contractor pursuant to Oregon Public Records Law or a subpoena, County will provide notice to Contractor before a response is due, and it shall be Contractor's responsibility to establish that such information is exempt from disclosure. Contractor shall defend, indemnify, and hold County harmless from any claim or administrative appeal, including costs, expenses, and any attorneys fees, related to a request to disclose information Contractor has labeled as "Confidential Information".

Assignment

This Agreement shall not be subcontracted or assigned without the prior written consent of both parties. In the event of any assignment or subcontract, Licensor will remain responsible for all obligations as described in this Agreement. Customer shall not assign this license or any of Customer's rights without the prior written consent of contractor. Any purported assignment without such consent is null and void. As a condition to granting consent, contractor may require the payment of additional licensing fees. It is understood that the authorized user may utilize the Software on a temporary basis at other locations without any additional fees or registration procedures, and such use will not be deemed to be a transfer of use as long as the licensed copy is not installed on more than one computer at a time.

Copies of the Software

Customer may make such copies of the Software as are reasonably necessary for Customer for backup, testing, training, system upgrades, and/or archival purposes only.

Term

The term of the license for the Software provided shall begin upon the effective date of this Agreement and continue until such time as the System ceases to be within the control of COUNTY or until otherwise terminated in accordance with the provisions of this Agreement.

Return of Software Upon Termination

Upon termination of this license agreement, COUNTY expressly acknowledges and agrees that within thirty (30) calendar days following such termination, COUNTY shall certify and warrant to Vendor, that: (i) it has destroyed or returned to Vendor all and every part of the software and documentation and all copies thereof. Upon termination, Vendor expressly acknowledges and agrees that within thirty calendar days following such termination, Vendor shall certify and warrant to COUNTY, that it has destroyed or returned to COUNTY all and every part of the confidential materials and all copies thereof.

Waivers

Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

Entire Agreement and Amendment

The provisions of this Software License Agreement and the Lane County Purchase Contract, including amendments and Exhibits, apply to the County's use of Licensor's Software, and all are binding. Terms in the Lane County Purchase Contract related to the County's use of Software and this Software License Agreement shall be incorporated herein, and continue in force for as long as this Software License Agreement is in effect. The term "Vendor" shall be replaced with "Licensor" for purposes of this Software License Agreement. These terms include: C-7 (Vendor's Personnel); C-8 (Right to Interface); C-9 (Confidential Information); C-10 (Patent and Copyright Infringement); C-11 (Title and Risk of Loss); C-12 (Preservation of Vendor's Proprietary Rights); C-14 (Warranties); C-17 (Independent Vendor); C-19 (Workers' Compensation); C-20 (Free From Tax Law and Discrimination Violations); C-21 (Employment Taxes and Workers' Compensation Payments); C-22 (Taxes); C-23 (Safety Requirements); C-25 (Lane Manual); C-26 (Prime Vendor Responsibilities); C-27 (Insurance); C-28

(Indemnity); C-30 (Force Majeure); C-34 (Successors in Interest); C-36 (Maintenance Services); C-42 (Good Faith Attempt to Resolve); C-43 (Disputes), and any Exhibits relevant to interpret or implement these provisions.

Survivability

The following provisions from the Lane County Purchase Contract shall survive the termination or expiration of this Agreement: C-9, C-10, C-12, C-28, C-34, C-42, and C-43. The surviving terms of the parties' Mutual Non-Disclosure Agreement, set forth in paragraph 15 of that agreement, shall survive the termination or expiration of this Agreement.

Modifications

This Software License Agreement may be altered, amended, or modified only by a written instrument signed by an authorized representative of each party, except that Licensor may modify this Agreement as necessary to comply with applicable laws and regulations.

Governing Law

The laws of the State of Oregon shall govern the validity, construction and enforcement of this Agreement, as well as the interpretation of the parties' rights and duties without reference to conflicts of laws. The parties will comply with all applicable federal laws, and rules concerning performance under this Agreement. The parties agree that the venue for any action or proceeding involving terms of this contract shall be an appropriate court in Lane County, Oregon.

Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives.

Company Name.

Lane County, Oregon

By: _____
Signature

By: _____
Signature

Print or Type Name

Print or Type Name

Title

County Administrator
Title

Business ID Number

Date

Date

INSURANCE COVERAGES REQUIRED

Vendor shall not commence any work until Vendor obtains, at Vendor's own expense, all required insurance as specified below. Such insurance must have the approval of Lane County as to limits, form and amount. The types of insurance Vendor is required to obtain or maintain for the full period of the contract will be:

- X **COMPREHENSIVE COMMERCIAL GENERAL LIABILITY** insurance including personal injury, bodily injury and property damage with limits as specified below. The insurance shall include:

COVERAGES

LIMITS

<u> </u> Explosion & Collapse	<u> </u> \$1 million per occurrence
<u> </u> Underground Hazard	<u>X</u> Limits of the Oregon Tort Claims Act (ORS 30.370), limits presently at \$500,000 per occurrence
<u>X</u> Products/Completed Operations	
<u>X</u> Contractual Liability	
<u> </u> Broad Form Property Damage	<u> </u> Other
<u> </u> Owners' & Vendors' Protective	

FORM

All policies must be of the occurrence form with combined single limit for bodily injury and property damage. The Risk Manager must review any deviation from this. All claims-made forms must have the prior approval of Risk Manager. Submit a complete copy of claims-made policies and endorsements with the certificate of insurance.

- AUTOMOBILE LIABILITY** insurance comprehensive form with limits as specified below. The coverage shall include owned, hired, and non-owned automobiles.

LIMITS

<u> </u> \$1 million per occurrence	
<u> </u> Not less than the limits of the Oregon Tort Claims Act (ORS 30.270) presently at \$500,000 per occurrence	<u> </u> Other

- X **PROFESSIONAL LIABILITY** insurance with limits not less than \$ \$ 1 Million.

- ADDITIONAL INSURED CLAUSE** The liability insurance coverages required for the performance of this contract shall be endorsed to name Lane County, its commissioners, officers, agents, and employees, as additional insured with respect to the activities performed under this contract.

- X **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY** as statutorily required for persons performing work under this contract. Any sub-contractor hired by Vendor shall also carry Workers' Compensation and Employers' Liability coverage.

EMPLOYER'S LIABILITY

X Limits of \$500,000.

- ___ **BUILDER'S RISK** insurance special form. Limits to be the value of the contract or \$_____.
- ___ **FIDELITY BOND** covering the activities of any person, named or unnamed, responsible for collection and expenditures of funds. Limit \$_____ per employee.

Any questions concerning insurance and indemnity should be directed to the COUNTY Risk Manager at (541) 682-4569.

PART V

TECHNICAL SPECIFICATIONS

PART V
Technical Specifications
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1 BACKGROUND INFORMATION

1.1 CURRENT ENVIRONMENT

Current Backup Services

The County currently uses HP Data Protector 5.1 to backup Windows and Linux servers over a local area network to multiple tape libraries. Backups run during nightly and weekend backup windows.

Details:

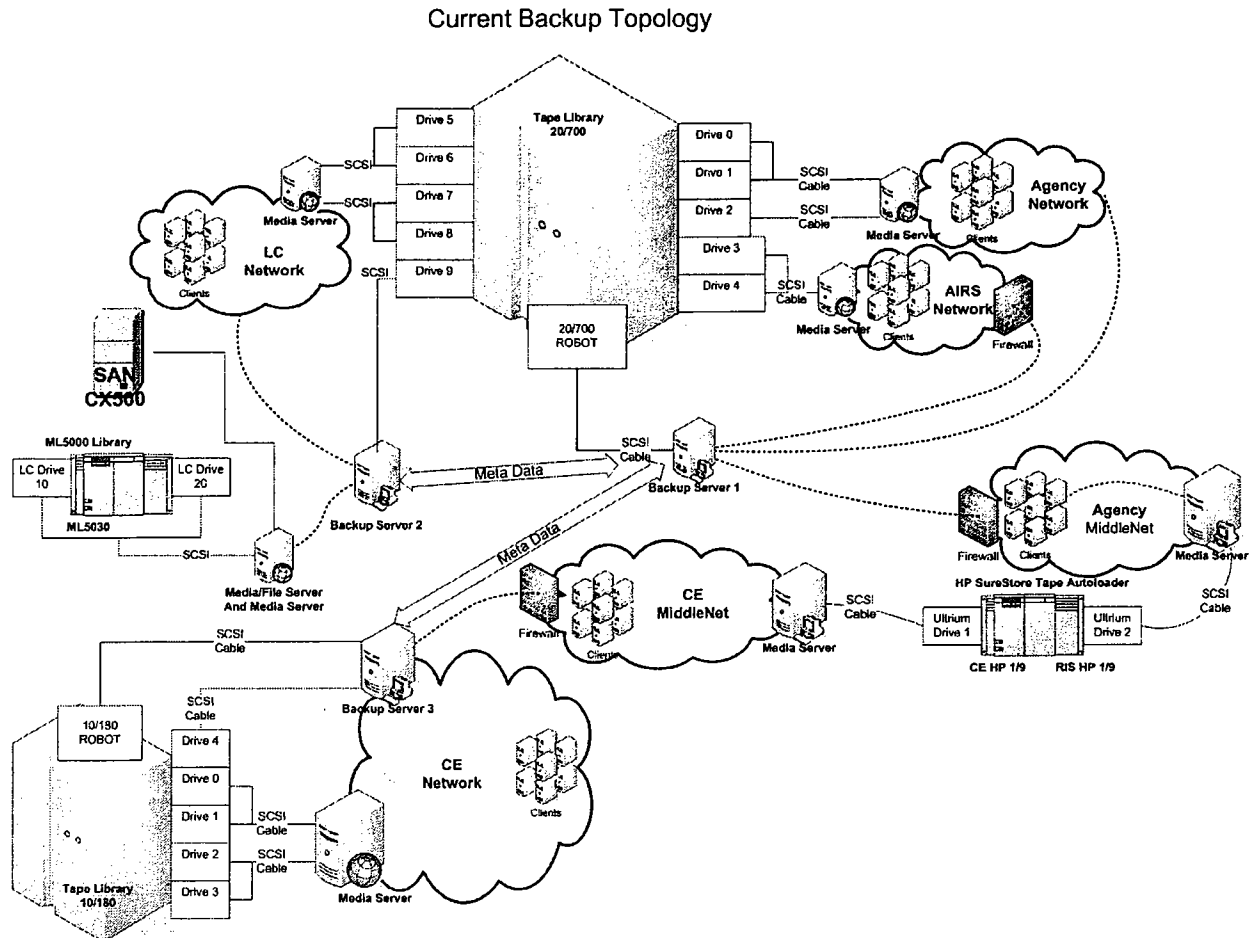
- 293 backup clients exist consisting mainly of Windows 2k/2k3 servers with some Linux. There are approximately 20 servers at remote locations with at least a T1 speed connection to the backup network.
- Microsoft Exchange 2003 servers
- Microsoft SQL server, Informix, and Oracle database
- Microsoft Cluster Servers
- Network backups, TCP/IP is the default protocol
- LTO 1 Tapes, HP SureStore library 20/700, 10/180 and two 1/9 autoloaders as well as an MSL 5000 library.
- Full backup to tapes equal 13 Terabytes and overall backup and archive retention on tape is at 215 Terabytes.
- Archive backups run monthly and are retained for one year
- Full backups are run on every client every weekend; exchange clients receive full backups every night.
- Incremental backups are run on weeknights.

FIGURE 1.1.1

Full Backup Growth by group (gb)					
	1-Jul-2001	3-Jan-2004	24-Sep-2004	25-Dec-2004	25-Feb-2005
RIS	89	185	352	410	408
AIRS	56	528	667	967	950
LCOG	155	265	337	478	478
GIS	90	317	887	1,232	1228
CE	375	2,225	2,417	2,583	3,147
LC	760	3,259	4,859	6,327	6,212
Total	1,525	6,779	9,519	11,997	12,423

The diagram below is an example of the current backup system with agency and hardware distribution. Media servers distributed to agency networks (security boundaries) for local backups, the Metadata to the cell server is allowed through a single port by the firewalls. For security reasons, reporting and management, the Regional Backup Solution must have layers of physical and logical autonomy, but must be centrally administrated.

FIGURE 1.1.2



1.2 REASONS FOR PROJECT

1. The current system is at or near physical capacity as well as end of life on some hardware.
2. Current backup software has too many issues or bugs followed by multiple patches that fail to deliver as well as administrative limitations that drive up the cost of ownership.
3. Database integration agents need to be more cost effective and less resource intensive. The current backup solution has one DB agent per job, per tape device, driving up resource and administrative overhead.
4. New compliance issues such as HIPAA and CJIS driving the need for a better backup solution.
5. We need to backup more data in less time to operate within our back windows.

2 PROJECT SUMMARY

Technical requirements and information requests for this section are expressed as numbered items below. Each item is labeled, numbered, and is followed by an indication that a "Vendor's Response" is needed. Each item is a requirement or question and they are grouped according to the following ranking in importance:

It is **REQUIRED** indicates functionality is mandatory in the proposed system.

It is **PREFERRED** indicates it is preferred that the functionality is present in the proposed system.

It is **DESIRED** indicates functionality that would be nice to have but is not a priority.

REQUESTED INFORMATION is used to solicit information rather than express requirements for the products and services delivered.

It is the purpose of this RFP to obtain proposals from qualified vendors that can provide software, hardware, and systems integration services that will ensure the successful implementation of the Regional **Backup Solution** in accordance with the requirements set forth in this RFP. It is important that the new system be flexible commensurate with changes in business practices, and technology.

2.1 REQUESTED SOLUTION

The Vendor can offer a product that includes components provided by business partners or other third party products. All components proposed will be evaluated as a single solution in accordance with the requirements of this RFP. **The Vendor should propose a solution most compatible with the requirements of PART V, TECHNICAL SPECIFICATIONS and should respond to each element in a manner that can be validated through the means cited in PART VI, EVALUATION METHODOLOGY.**

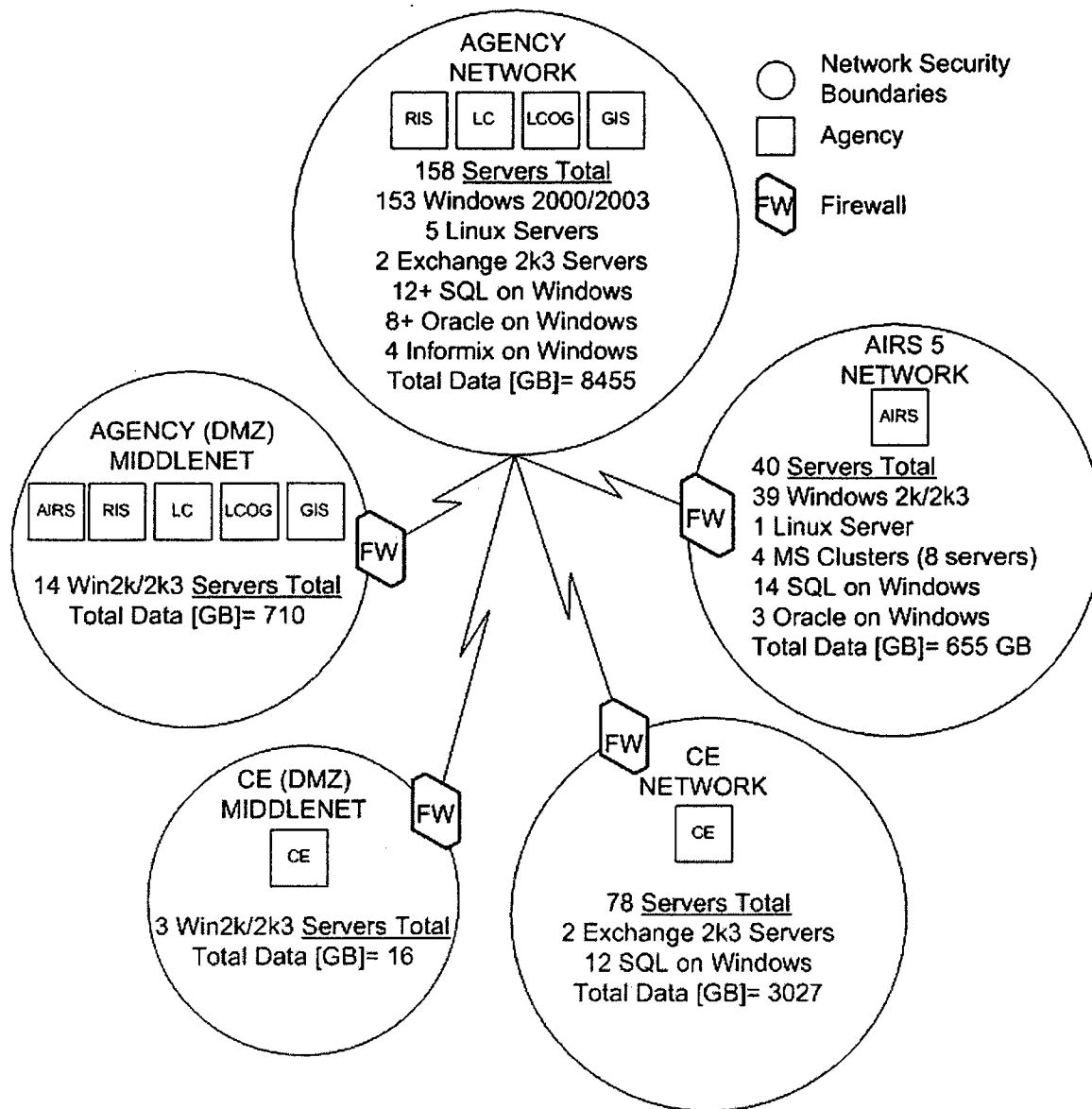
It is **REQUIRED** that:

2.1.1 Backup Solution Overview - see figure 2.1.1 (below)

The Backup Solution Should:

- Service 6 agencies spanning security subnets and active directory domains all residing in one physical location or data center.
- Be able to report backup resource and media volume utilization per client agency.
- Provide physically or virtually separation between multiple backup client agencies residing in one physical datacenter. Agency backup representatives must be able to manage their own backups and restores without having access to the other agencies backup data or client machines.
- Maintain backup traffic in its own network security boundary but be managed from a single location. Minimizing network traffic between security boundaries for management is a priority. Some agencies reside in more than one security network, the public (DMZ) network, and private internal network.
- Run on Microsoft Windows 2003 or later versions if it is a non-appliance backup management system.
- Run on client operating systems which include Windows 2000/2003 Server or later as well as Linux and Unix servers.
- Integrate with Multiple active directory Forests and domains for admin/user management and client system management.
- Provide Disk based backups and restores with offsite options for disk or tape.
- Provide disaster recovery functionality to a tape storage facility, DR site, or options for both.
- Support existing data size at 13 terabytes and planned data growth to 39+ terabytes in 3-4 years.
- Maintain a minimum of 7 days backup data onsite with full data restorability for each day.
- Provide full backup sets that are sent offsite every week, once a month full backups should be archived for a 12 month rolling window.

FIGURE 2.1.1



2.1.1 Backup Solution Overview – Vendor Response:

It is **DESIRED** that:

2.1.2 Backup Solution

The Backup Solution Should:

- Maintain a minimum one month backup data onsite with a full data restore point for each day.
- Data mirrored or replicated offsite within 4 hours of backup
- Provide option for near continuous data protection for critical systems.
- Backup data mirrored or replicated offsite once daily

2.1.2 Backup Solution – Vendor Response

2.2 PROCUREMENT OBJECTIVES

It is **PREFERRED** that:

2.2.1 Procurement Objectives: In addition to all other requirements set forth in this document, objectives for procuring and implementing the best **Backup Solution** for the County include:

- Selecting a vendor with a proven track record for the system proposed.
- Procuring a flexible system with promise for meeting future demands.
- Procuring a system designed for usability; that is, designed for administrators and users to help them manage backup data effectively.
- Implementing a system within a reasonably short amount of time.
- Receiving sufficient training to enable a smooth transition from the old system to the new.

2.2.1 Procurement Objectives – Vendor Response

It is **REQUIRED** that:

2.2.2 Backup Solution Purchase Budget

The **Backup Solution** must be affordable. The County has funding that cannot exceed **\$600,000** for purchase of the requested solution. Vendor proposals must be priced to not exceed this **\$600,000** amount. On-going support, maintenance, upgrades, and options may be proposed that are priced outside of this budget, but they may not be functions or features or services that are integral to the solution. Options may be proposed and priced separately for functions and features that meet requirements designated as “DESIRED” in this RFP, for instance, or they may be enhancements beyond what has been stated in the RFP requirements. The Vendor’s cost proposal must identify cost according to instructions and guidelines in APPENDIX A, Cost Proposal. This will provide the means to identify the system cost separate from the cost of options. The vendor must indicate here that the cost proposal provided complies with this not-to exceed **\$600,000** budget requirement.

2.2.2 Backup Solution Purchase Budget – Vendor Response:

2.3 APPROACH

It is **REQUIRED** that:

The Vendor should offer a high level plan, to implement the **Backup Solution** as described in *PART V, TECHNICAL SPECIFICATIONS*. The Vendor should consider the following to be essential to the proposed solution:

- The vendor will provide onsite consulting during the initial phase which includes implementing the backup infrastructure with clients, all part of the pilot installation to be used for acceptance testing (see *PART V, TECHNICAL SPECIFICATIONS*, 6.1).
- A minimum of one week of formal training to be provided for 2 County employees. The training should enable support staff to successfully complete implementation with minimal vendor assistance.

2.3 APPROACH – Vendor Response:

3 PROJECT OVERSIGHT

3.1 PROJECT MANAGEMENT SERVICES

It is **PREFERRED** that:

The County requests that the Vendor provide project management services to assist the County Project Manager in the actual implementation of the solution. The County Project Manager will collaborate with the Vendor's project management resources and process to help:

- Ensure that the various elements of the project are properly planned.
- Execute the Project Management Plan by carrying out the activities described therein.
- Manage overall change control by properly coordinating changes across the entire project.

Project management services will be provided by the vendor that meets requirements stated above. Please describe how project management services will be provided and include details to help us understand the proposed process; level of effort, commitment of resources and key personnel, and logistics for managing planning, risk, and quality assurance. Include the roles and responsibilities of the Vendor's staff and County staff for:

- Approvals and/or replacement of key personnel.
- Development and approval of plans.
- Scope, quality and risk management.
- Schedule management.
- Status reporting and other communications functions.

3.1 Project Management Services - Vendor Response:

3.2 LANE COUNTY RESPONSIBILITIES

REQUESTED INFORMATION:

The Vendor shall fully describe the responsibilities expected of the County. These should address expectations for technical or administrative products or tasks and hardware or software to be supplied.

3.2 Lane County Responsibilities - Vendor Response:

4 INTENTIONALLY OMITTED

5 FUNCTIONAL REQUIREMENTS

It is **REQUIRED** indicates functionality is mandatory in the proposed system.

It is **PREFERRED** indicates it is preferred that the functionality is present in the proposed system.

It is **DESIRED** indicates functionality that would be nice to have but is not a priority.

REQUESTED INFORMATION is used to solicit information rather than express requirements for the products and services delivered.

For each numbered requirement stated in this section, the RFP requests a product or service description that would support the vendor's compliance with the requirement. Those guidelines should be used to prepare responses.

5.1 ADMINISTRATION

It is **REQUIRED** that:

5.1.1 Modular Design: Describe how the system allows for multiple agencies to use the same system without knowledge of or effect on each other. Reports, monitoring and backup media should be specific to the separate departments (refer to diagram 2.1.1).

5.1.1 Modular Design - Vendor Response:

5.1.2 Centralized Administration: Describe how the system allows for full administrative capabilities through a single user interface

5.1.2 Centralized Administration - Vendor Response:

5.1.3 Granular Administrative Roles: Describe how the system can be used to delegate admin, operator and user rights for ease on management and to minimize risk.

5.1.3 Granular Administrative Roles - Vendor Response:

5.1.4 Backup System DR: Describe backup system and Metadata recovery in the event of a disaster.

5.1.4 Backup System DR – Vendor Response:

It is **PREFERRED** that:

5.1.5 Ease of Management: Describe the system's graphical user interface (GUI) as well as what advanced administrative functions are available via the GUI or command line.

5.1.5 Ease of Management - Vendor Response:

REQUESTED INFORMATION:

5.1.6 Control Scripts: Describe how your systems functionality for external control via command line or scripts.

5.1.6 Control Scripts – Vendor Response:

5.1.7 Scalability: Describe how your system will scale for backup data growth; consider HW purchases and SW licensing.

5.1.7 Scalability – Vendor Response:

5.2 BACKUP and RESTORE

It is **REQUIRED** that:

5.2.1 Backup Data Integrity: Describe how the system will verify backup data integrity on the backup media.

5.2.1 Backup Data Integrity – Vendor Response:

5.2.2 User Level Restores: Detail user level restore functionality; consider user groups, active directory and file security.

5.2.2 User Level Restores – Vendor response

It is **PREFERRED** that:

5.2.3 Bare Metal Restores: Detail your bare metal restore functionality.

5.2.3 Bare Metal Restores – Vendor Response

5.2.4 Fast Backups: Detail the system's backup performance levels (throughput), and detail any related features.

5.2.4 Fast Backups - Vendor Response:

5.2.5 Fast Restores: Detail requested restore response times and throughput (assume the requested data is locally available and on your solutions backup media).

5.2.5 Fast Restores – Vendor Response

5.2.6 Redirect Restores: Detail ability to perform authenticated restores of files to a host other than the one backed up from.

5.2.6 Redirect Restores – Vendor Response

It is **DESIRED** that:

5.2.7 User Level backups: Describe how our users can use the system GUI to create and start their own backups.

5.2.7 User Level backups – Vendor Response:

5.2.8 File Security: Describe functionality for backup and restore of file level security separate from the files

5.2.8 File Security – Vendor Response:

REQUESTED INFORMATION:

5.2.9 File Security: Describe how file level security impacts a user's ability to backup or restore data.

5.2.9 File Security – Vendor Response:

5.3 CLIENTS

It is **REQUIRED** that:

5.3.1 Open File Management: Describe OFM integration for your system.

5.3.1 Open File Management – Vendor Response

5.3.2 MS Exchange Agent: Describe Exchange integration for your system. (List all versions)

5.3.2 MS Exchange Agent – Vendor Response

5.3.3 SQL Server Agent: Describe SQL integration for your system. (List all versions)

5.3.3 SQL Server Agent – Vendor Response

5.3.4 Oracle Agent: Describe Oracle integration for your system. (List all versions)

5.3.4 Oracle Agent – Vendor Response

5.3.5 MS Cluster Agent: Describe MS Cluster integration for your system.

5.3.5 MS Cluster Agent – Vendor Response

5.3.6 Windows OS: Describe backup support for all Microsoft Windows OS's

5.3.6 Windows OS - Vendor Response

5.3.7 Linux/Unix OS: Describe backup support for Linux/Unix Operating systems

5.3.7 Linux/Unix OS - Vendor Response

It is **PREFERRED** that:

5.3.8 Client Deployment/Updates: Describe centralized client installs, updates and uninstalls. Also how they are automated and scheduled.

5.3.8 Client Deployment/Updates - Vendor Response

5.3.9 Install/Uninstall and Updates: Describe how client installs, updates and uninstalls require no reboots, and how SW removal is clean without leaving registry entries or files on the client machine.

5.3.9 Install/Uninstall and Updates - Vendor Response

5.3.10 Client Resources: Describe client system resource utilization (CPU and Network) during backups and restores. How do you minimize contention for local system and network resources?

5.3.10 Client Resources - Vendor Response

5.3.11 Active Directory (AD): Detail support for granular AD restores. (OU, group, user)

5.3.11 Active Directory (AD) - Vendor Response

5.3.12 Volume Shadow Copy (VSS): Detail support for Microsoft VSS

5.3.12 Volume Shadow Copy (VSS) - Vendor Response

It is **DESIRED** that:

5.3.13 VMWare ESX: Describe your systems support for VMFS volumes.

5.3.13 VMWare ESX – Vendor Response

5.4 COMPATIBILITY

It is **REQUIRED** that:

5.4.1 System SW and HW compatibility: Provide any resources that help to verify compatibility between all HW and SW components included in your solution.

5.4.1 System SW and HW compatibility – Vendor Response

It is **DESIRED** that:

5.4.2 SAN Connectivity: Describe all current and planned SAN integration, as the source or destination for backup data.

5.4.2 SAN Connectivity – Vendor Response

5.5 ERROR HANDLING

It is **PREFERRED** that:

5.5.1 Failed Backup Restarts: Describe how your system automatically recovers from failed backup jobs and or clients in the backup jobs.

5.5.1 Failed Backup Restarts – Vendor Response

5.6 LICENSING

It is **REQUIRED** that:

5.6.1 Licensing Model: Describe how your system licensing model works.

5.6.1 Licensing Model – Vendor Response

5.7 MEDIA MANAGEMENT

It is **REQUIRED** that:

5.7.1 Data Availability: Describe how your system backup data is mirrored or replicated for offsite storage.

5.7.1 Data Availability – Vendor Response

5.7.2 Media Management: Describe how local and offsite backup data/media is managed and tracked.

5.7.2 Media Management – Vendor Response

It is **PREFERRED** that:

5.7.3 Contiguous Data: Explain system functionality for demultiplexing or defragmenting data on backup media for fast restores.

5.7.3 Contiguous Data – Vendor Response

REQUESTED INFORMATION:

5.7.4 Data Retention: Describe how backup data ages off target media

5.7.4 Data Retention – Vendor Response

5.8 REPORTS & ALERTS

It is **REQUIRED** that:

5.8.1 Reports: Describe reports that provide auditing, change control and service level metrics.

5.8.1 Reports – Vendor Response

5.8.2 Alerts: Describe alerts that provide administrative information about thresholds and failures.

5.8.2 Alerts – Vendor Response

It is **PREFERRED** that:

5.8.3 Throughput: Describe any available backup and restore throughput reports.

5.8.3 Throughput – Vendor Response

It is **DESIRED** that:

5.8.4 Database Queries: Describe how the system can be queried, for custom reporting, by third party tools.

5.8.4 Database Queries – Vendor Response

5.9 SECURITY

It is **PREFERRED** that:

5.9.1 Encryption: Describe functionality for encryption in transit and on the target backup media.

5.9.1 Encryption – Vendor Response

5.9.2 AD Authentication: Describe how the systems user accounts will be authorized via Active Directory integration.

5.9.2 AD Authentication – Vendor Response

It is **DESIRED** that:

5.9.3 Change Logs: Detail any system change log functionality

5.9.3 Change Logs – Vendor Response

5.10 TROUBLESHOOTING

It is **REQUIRED** that:

5.10.1 24/7 Support: Detail 24/7 support services, accessibility and response times. If remote access is required, how does the vendor propose to remotely access the backup system(s)?

5.10.1 24/7 Support – Vendor Response

It is **PREFERRED** that:

5.10.2 Product Knowledgebase: The system should have a comprehensive knowledgebase that is easy to find and use.

5.10.2 Product Knowledgebase – Vendor Response

5.10.3 Q&A Forums: Q&A forums exist for all vendor system technologies.

5.10.3 Q&A Forums – Vendor Response

6 TECHNICAL STANDARDS

The Technical Standards portion of this RFP identifies general technical standards that the proposed system should meet. Where appropriate, the technology used in the County has been described as a preference.

6.1 PRODUCTION ACCEPTANCE

The County will confirm system functionality, performance, and reliability on-site prior to final production acceptance. Production acceptance testing is dependant on and begins immediately following the completion of the pilot installation. The pilot installation and the production acceptance testing will take 30 business days from start to finish. The vendor will provide onsite consulting throughout the pilot install and the production acceptance tests.

REQUESTED INFORMATION:

- 6.1.1 Pilot Installation:** Implementing the backup infrastructure with some clients installed from multiple security boundaries.

The pilot install includes:

- Backup HW/SW infrastructure in place to support all County client servers and data volume outlined by this RFP.
- At least 30-40 backup clients with one SQL and Exchange backup agent installed and configured.

6.1.1 Pilot Installation – Vendor Response:

- 6.1.2 Production acceptance:** Provide a copy of your recommended on-site Acceptance Test process for the proposed software and hardware, scheduled for 30 days. The test process should include tasks and procedures to achieve specific objectives established for the following:

- Zero down time as a result of hardware failure during acceptance testing.
- Reliability/availability testing (Maximum of 1 failure out of 100 backup or restore jobs as a result of system bugs or defects.)
- Backup throughput testing based on *PART V, TECHNICAL SPECIFICATIONS, 5.2.4* vendor response.
- Restore job response time and throughput testing based on *PART V, TECHNICAL SPECIFICATIONS, 5.2.5* vendor response.
- Vendor SLA testing for issue reporting, tracking and issue resolution.

6.1.2 Production acceptance – Vendor Response:

- 6.1.3 Performance Period:** Following successful completion of the Production acceptance Test, the system shall run for a period of not less than 30 days without experiencing an unresolved “**Level 1. Emergency Problem**”.

6.1.3 Performance Period – Vendor Response:

6.2 SYSTEM WARRANTY

It is **REQUIRED** that:

- 6.2.1 System Warranty:** The proposed solution should include a warranty covering 100% of the software and hardware installed, where the Vendor will provide warranty services commensurate with the roles and responsibilities of the Vendor in system installation and maintenance. The proposed solution should include a warranty that the software and equipment will perform substantially in accordance with COUNTY'S specifications and Vendors accompanying documentation. The County desires to obtain a one-year warranty provided at no charge to effectively warrant the software and hardware. The warranty should provide appropriate coverage from the first day following the performance period. Explain the general provisions and schedules for warranty as it relates to the Vendor's responsibilities. Describe exceptions and non-covered items as appropriate.

6.2.1 System Warranty – Vendor Response:

- 6.2.2 Start of Warranty Period:** The warranty period shall start following production acceptance testing and performance period (see *PART V, TECHNICAL SPECIFICATIONS*, 6.1).

6.2.2 Start of Warranty Period – Vendor Response:

REQUESTED INFORMATION:

- 6.2.3 Warranty Problem Resolution:** The County desires timely resolution of any software or equipment problems originating from Vendor-developed software or equipment in the accepted system during the warranty period. Provide Vendor definitions of problem severity and the Vendor guaranteed response time for each severity.

6.2.3 Warranty Problem Resolution – Vendor Response:

- 6.2.4 Third Party Warranty:** Provide information on warranties provided for all proposed third-party software and hardware.

6.2.4 Third Party Warranty – Vendor Response:

6.3 MAINTENANCE AND UPGRADES

6.3.1 Maintenance

It is **REQUIRED** that:

- 6.3.1.1 Maintenance Contract:** The Vendor commit to a maintenance contract for the software and hardware in the proposed system.

Maintenance contract extension periods beyond the warranty period are possible. Maintenance proposed must include full costs per year for up to five years, and costs beyond per year for one-year extensions. Provide the basis upon which one year maintenance extension costs are calculated.

Proposed maintenance support must address problems according to the following anticipated requirements:

- A. Level 1. Emergency Problem:** Critical user functionality with significant business impact. Critical user functionality will be defined in contract negotiations by mutual agreement between the County and the Vendor. Support for Level 1 problems must be available 24 x 7. The Vendor must

begin work on a Level 1 problem within four hours of it being reported and must continue to apply their best effort at resolution until completed.

- B. Level 2. Application Malfunction:** A portion of the system is malfunctioning, but critical user functionality is not seriously impaired. Support for this class of problem must be available Monday through Friday from 8:00 AM to 5:00 PM Pacific Time. Same day response is preferred, but next business day is required. A status reporting process must be provided to us for tracking the resolution of problems.

In order for the County and the Evaluation Committee to fully understand the Vendor's maintenance process, the Vendor must describe its approach to problem reporting, prioritization, and resolution. In doing so the Vendor must relate to the problem level definitions and expectations stated above.

6.3.1.1 Maintenance Contract – Vendor Response:

REQUESTED INFORMATION:

- 6.3.1.2 Support Contacts:** Indicate any limits on the number of County personnel authorized to contact the Vendor for system support. If a limited number of authorized contacts are proposed, include the options and associated costs for increasing the number of support contacts.

6.3.1.2 Support Contacts – Vendor Response:

6.3.2 Upgrades

- 6.3.2.1 Upgrade Commitment:** Indicate the commitment to upgrading the proposed application software to enhance business functionality and take advantage of upgrades to the server operating system, the workstation operating system, or the proposed database management system. Discuss upgrades that are part of a regular maintenance agreement and how upgrades can be done by customer request. Costs shared among multiple customers and costs born entirely by the County must be distinguished.

6.3.2.1 Upgrade Commitment – Vendor Response:

- 6.3.2.2 User Input:** Describe how the County would be informed and given an opportunity for feedback regarding proposed upgrades to the application software in the proposed system. This can be accomplished either directly or through means such as User Group participation.

6.3.2.2 User Input – Vendor Response:

- 6.3.2.3 Upgrade Frequency:** Describe the projected frequency of new releases to the system, the actual schedule of new releases in the past year, and the frequency at which patches are made available.

6.3.2.3 Upgrade Frequency – Vendor Response:

- 6.3.2.4 Upgrade Announcements:** Describe at what point in their upgrade cycle the enhancements/fixes/new initiatives are published for their customers.

6.3.2.4 Upgrade Announcements – Vendor Response:

It is **REQUIRED** that:

- 6.3.2.5 Upgrade Documentation:** The Vendor provides documentation of database changes as part of all system upgrades, so that County's use of the system for reporting purposes can be maintained.

6.3.2.5 Upgrade Documentation: – Vendor Response:

6.4 SYSTEM EXPANSION

6.4.1 Technology Enhancements

Lane County is seeking current technology in this RFP. It recognizes that there is great potential to enhance the system with the many new technological advancements proliferating in the industry today.

REQUESTED INFORMATION:

- 6.4.1.1 Enhancement Plans:** Describe current plans and projects for technical and business enhancement of the proposed system, including planned addition or removal of supported products, interfaces or technologies (iSCSI, FC, CAS and D2D).

6.4.1.1 Enhancement Plans – Vendor Response:

PART VI

EVALUATION METHODOLOGY

1 EVALUATION METHODOLOGY

An Evaluation Committee comprised of Lane County RIS personnel will conduct the evaluation process. Committee members will evaluate proposals that appear to satisfy the requirements using evaluation factors with assigned weights. The Committee may divide into subgroups at times to manage and score specific evaluation activities throughout all of the evaluation phases described below. Scores and results from all activities may be summarized, combined, accumulated or otherwise organized to accomplish the overall scoring of the evaluation that will support the Evaluation Committee's final recommendation. The Evaluation Committee's final recommendation will be subject to the approval by the Lane County Board of Commissioners. Such approval may require additional review of results, extension or addition of evaluation activities or additional deliberation of proposal materials before it is granted.

The Evaluation Committee includes:

Jim Sellars
Team Lead
Senior Systems Network Analyst
Regional information Systems

John Baldwin
Senior Systems Network Analyst
Regional Information Systems

Chris Green
Senior Systems Network Analyst
Regional Information Systems

1.1 Budget Compliance

Proposals will be evaluated first on the Vendor response to required criteria in *PART V, TECHNICAL SPECIFICATIONS*, and *Section 2.2.1* the backup Solution Purchase Budget. Proposals will be rejected if they do not comply with the stated budget requirement that states the cost of the solution must not exceed \$600,000

1.2 Evaluation Criteria - Weighted Point Scale

Remaining proposed solutions will be evaluated against a set of weighted criteria. The proposals will be evaluated through assignment of points to each "*Vendor Response*". The weighted point scale will represent the priority and percentage weights shown in the tables below. The evaluation criteria are specific to all vendor responses to *PART V, TECHNICAL SPECIFICATIONS*. Each vendor response will be scored and weighted individually where the overall score will reflect their standing.

CRITERIA PRIORITY	WEIGHT AS A PERCENT
Required	100%
Preferred	80%
Desired	60%
Requested information	40%

SAMPLE:

Vendor Response From RFP	Priority	Weight As a Percent	Score 0-4	Weight Adjusted Score
2.1.1 Backup Solution Overview	Required	1	4	4
2.2.2 Procurement Objectives	Preferred	0.8	4	3.2
5.2.7 User Level backups	Desired	0.6	4	2.4
3.2 Lane County Responsibilities	Information	0.4	4	1.6
Total Adjusted Score				11.2

1.3 General Evaluation Procedure

Proposals will be evaluated and scored according to the evaluation criteria, described below.

As evaluation activities are coordinated with participating vendors, specifications and logistics will be provided for each activity. Deadlines will be set for these activities, including deadlines for Vendors to deliver additional requested materials. COUNTY reserves the right to extend any related deadline no less than two (2) days prior to such deadline in the interests of encouraging and assuring appropriate expenditure of public funds, and without prejudice.

In addition to information submitted by each Vendor in this competitive process, COUNTY reserves the right to review and utilize information which the County may have related to prior contacts or experience with any Vendor, including information from trade shows, conferences, Requests for Information (RFI), etc.

1.3.1 Phase 1

Proposal responses to the County budget requirement in *PART V, Section 2.2.2 Backup Solution Purchase Budget* will be reviewed for compliance. The cost proposal submitted according to instructions in Appendix A will then be reviewed. If either shows that the vendor's response is not in compliance with the not-to-exceed \$600,000 budget requirement of this RFP, the proposal will be rejected.

1.3.2 Phase 2

All qualifying proposals following Phase 1 will be reviewed and assigned points by the evaluating committee. Additionally, vendor references may be checked and the Evaluation Committee may develop and distribute written follow-up questions to solicit greater detail on the information provided. The Evaluation Committee will then consider whether points have been appropriately assigned in light of the responses to questions and reference checks. They will make any necessary adjustments to assigned points, and recommend the Vendors who will be included in the final group for which the final phase of evaluation will take place.

1.3.3 Phase 3

A final set of Vendors will be chosen for a final stage of evaluation that will be done to further develop and validate specifications of the proposed solution for the Evaluation Committee. This phase will consist of activities designed for specific information gathering, which may include a Demonstration and Live Test of the software proposed, direct interviews, additional reference checks, responses to additional follow-up questions, information gathered from supporting documentation, and client site visits. The criteria for evaluation of the outcomes of these Phase 3 activities are the same as that listed earlier in this section.

The score of the Live Tests is part of the evaluation process and demonstrating vendor will be provided with the results of their own tests. Information gathering during this phase of evaluation will require the Vendor to be prepared to:

- Provide technical staff for interviews.
- Provide additional technical documentation.
- Accommodate and/or assist to coordinate site visits by representatives of the County.
- Conduct a demonstration and/or live test of proposed software, for which specifications will be provided in advance.

The Vendor shall be responsible for all costs for preparation and presentation in this regard.

The final successful Vendor will be chosen based on scores and results of the entire evaluation process. The COUNTY reserves the right to reject any proposal not in compliance with the proposal documents or all prescribed public bidding procedures and requirements and may, for good cause, reject any or all proposals when it is in the public interest to do so.

APPENDIX A

COST PROPOSAL

COST PROPOSAL

The cost proposal section of the Vendor's overall proposal provides in one place all the relevant information for cost of the system and the various options that are being proposed. The purpose of the "Cost Proposal" is to bring together all of the cost information. This part of the proposal must contain the following sections in the order indicated and in the format shown in *APPENDIX A, COST PROPOSAL*:

1. Price Summary
2. Pricing Detail for Proposed System
3. Detail Pricing for Options
4. Detail Pricing for Maintenance and Upgrades
5. Policies for Price Changes
6. Pricing Options for Capacity Growth

Prices quoted shall be deemed to include all costs for which the COUNTY shall be responsible. Unspecified costs will be borne by the Vendor.

All cost information shall be in U.S. dollars.

All Vendors shall assume and pay all applicable state, federal, and municipal taxes and contributions which are payable by virtue of development, delivery, and installation of the item(s) specified in their bid or changes. The COUNTY will provide certificates of tax exemption upon request.

1. Price Summary: The Vendor must complete a price summary sheet for the primary solution proposed as well as any alternative solution offered.
2. Detail Pricing for Proposed System: Vendors must complete all Cost Proposal information for the entire proposed product, including, if applicable, for all components of the product, using the defined content and format described in *APPENDIX A, COST PROPOSAL*. Unless otherwise provided in part V, the proposal shall clearly and completely delineate all costs associated with the proposed products and services. For proposal comparison, the cost is defined as including procurement, transportation, installation, integration and making operational all equipment and software, plus data conversion, system documentation, user training, maintenance and ongoing support.
3. Detail Pricing for Options: Vendors must complete all Cost Proposal information for all components of the proposed Performance Measures Information System products using the defined content and format described in *APPENDIX A, COST PROPOSAL*. The proposal shall clearly and completely delineate all costs associated with each option or proposed enhancement to the proposed products and/or any of their proposed components. For proposal comparison, the cost is defined as including procurement, travel and living, installation, integration and making operational all equipment and software, plus data conversion, system documentation, user training, maintenance and ongoing support.
4. Detail Pricing for Maintenance and Upgrades: Vendors should provide all pricing for ongoing support costs. This should include maintenance for all proposed products, including those from partners or third party vendors. The vendor should be specific to pricing and policies regarding upgrades. Upgrades should be defined clearly in terms of which are accomplished as a part of maintenance and which are priced separately. Pricing should be clear, even if estimates, for the timing and cost of upgrades that are not included in the maintenance services. Pricing should be provided for other ongoing support costs as appropriate.
5. Policies for Price Changes: Usage of the Performance Measures Information System may increase over time. Vendors must specifically state that the policies and unit prices will be firm for one year from the date of proposal submittal with the following exceptions: The proposal must specify that the COUNTY can take advantage of any general published price reductions which occur between the time of contract signing and installation. After installation and during the life of any subsequent contract,

there may be general published price changes. In the event of a decrease, the COUNTY will receive the benefit of such changes.

6. Pricing options for capacity growth: Vendor must provide details about hardware and software options for purchasing based on data volume growth beyond the capacity of the proposed solution. Pricing information should account for growth up to 49 Terabytes of raw backup data.

Any discount stated or computed as a percentage of the general published price at the time of the proposal will be considered applicable to any subsequent price changes during the life of the contract.

Pricing Tables

Please use the following tables for all Cost Proposal summary and detail price information. The Vendor should electronically update *this APPENDIX*. Rows may be added as needed.

Price Summary for Proposed Backup Solution Purchase	
Component	Fixed Price
Backup Solution Total (NTE 600,000)	
"Options"	

Pricing Details for Backup Solution			
Item	Quantity	Unit Price	Extended Price
Software			
Software Subtotal			
Hardware			
Hardware Subtotal			
Services			
Services Subtotal			
Training			
Training Subtotal			
Implementation			
Implementation Subtotal			
Backup Solution Total			
Options			
Options Subtotal			

Price Detail for "Options"			
Item	Quantity	Unit Price	Extended Price
Software			
Software Subtotal			
Hardware			
Hardware Subtotal			
Services			
Services Subtotal			
Training			
Training Subtotal			
Implementation			
Implementation Subtotal			
"Options" Total			

Price Detail for Ongoing Support					
Product or Service	Year 1	Year 2	Year 3	Year 4	Year 5
Backup Solution					
Maintenance/Support					
Maintenance Subtotal					
Upgrades					
Upgrades Subtotal					
Ongoing Support Total					

Policies for Price Changes: *Vendor Response*

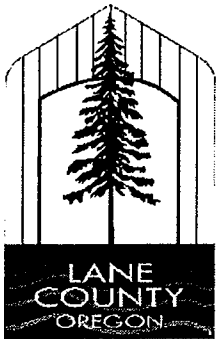
Pricing Options of Capacity Growth: *Vendor Response*

VERSION

RIS Regional Information Services

DATA BACKUP AND RESTORE SERVICE

Document is maintained at <\\ris1.net\\files\\LAN Systems\\Documentation\\Data Protector>



CREATED BY: JOHN BALDWIN

MODIFIED BY:

DATE CREATED: JANUARY 30, 2006

DATE MODIFIED:

Data Backup and Restore Service

Lane County IS
125 East Eighth Avenue
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APPROVAL RECORD					
Version	Approval Date	Approver	Approved	Denied	Comments
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1.0		Jim Sellars			

NOTICE

The information contained in this document is subject to change, but not without approval by Lane County and its customers. All information contained herein has been prepared by Lane County and is intended for LCC employees and their customers.



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1.0 Executive Summary

1.1 Key Service Definitions/Features

RIS backup and restore services for windows operating systems, individual files and applications. All customers will be able to run their own restores and be provided both restore and backup scheduling services within defined service hours.

1.2 Contact Info and Service Hours

Customers are expected to perform their own restores via management tools provided to them. However, should the customer require any restore or backup scheduling assistance, contact the RIS Service Desk at **682-4375 (option 2)**

Customers can expect the backup and restore service to be available:

- For online file level restores or offline file restores where the tapes are in the library, 7 × 24 × 365 via user interface.
- For offline file level restores where tapes are not in the library, 7 × 24 × 365 via user interface in coordination with the RIS service desk.
- For System level restores, Monday to Friday 8am to 5pm performed by RIS.
- Requests for special backups or a change to the backup schedule, Monday to Friday 8am to 5pm performed by RIS.

Service Hour Exceptions (e.g. non-business hours, weekends, public holidays) include:

- Any timely, prearranged request by a customer
- Any restore requests for critical 24 x 7 servers or data.
- Any extenuating circumstances that require off hour service
- Note: If RIS personnel are first to identify a server as needing restore services outside of normal service hours they will attempt to contact the customer/business owner to determine priority, if the customer is unavailable and no affected users contact the service desk, the restore will be scheduled for regular service hours.

2.0 Detailed Service Description

RIS agrees that it will make reasonable efforts to meet the minimum service levels and targets set out in this Backup and Recovery Service definition document.

2.1 Minimum Service Definition

- A. Data Recovery. RIS will provide 98% recovery on successfully backed up data
- B. Data Restoration Initiation for:
 - i. Online data: Customer will be able to restore online data through the client software or web interface. An online data restore will begin within 10 minutes from the point that the online data is requested.



- ii. Onsite Tape: Onsite tape restores for tapes in the library will begin within 30 minutes from the time of notification. In the event that the tape is onsite but not in the tape library a restore can begin within 2 hours from the time of notification.
- iii. Offsite Vaulted tape: Offsite tape restores will be subject to return service times from CDI vault immediately following the time of notification.

Per CDI:

- Normal requests for tapes made before 10am will result in delivery by the afternoon same day, requests for tape after 10am will be delivered in the afternoon next day.
- Priority requests will be delivered within 4 hours at extra cost. (extra cost is currently absorbed by RIS)

2.2 Service Definitions

- A. Successfully backed up data. RIS can only provide a 98% data recovery guarantee on data that has been backed up without error corruption. Upon each backup operation our backup software will set a flag that clearly indicates that a successful backup has occurred. Data backup success will also be reported on a daily, weekly, monthly or quarterly basis depending on customer preferences. In the event of a backup failure the customer may contact RIS to arrange for a subsequent backup.
- B. Data Restore Initiation. In most cases a customer will be able to restore files without RIS assistance. Where necessary, the Measured Time to Begin Data Restoration starts upon the notification of a Data Restoration by the Customer to the RIS Service Desk by telephone in accordance with section 1.2 of this document and the release of the affected Service by the Customer to RIS for executing a data restore. The Measured Time to Restore ends when the data restoration is initiated. RIS will notify the Customer by telephone or email and the Customer will confirm that data restoration has been initiated. Data restoration will begin only when a customer is ready to receive data.
- C. Measured Unavailable Time for Service. Enterprise Backup and Recovery Service is deemed to be unavailable to the Customer when the Enterprise Backup and Recovery Service is fully interrupted, such that the Enterprise Backup and Recovery Service cannot be accessed or used by the Customer (an "Outage"), but excluding any such circumstances arising as the result of any event contemplated in the Standard Terms. The measured unavailable time starts upon notification of an Outage by the Customer to the RIS Network Operation Centre by telephone in accordance with section 1.2 of this document and the release of the affected Service by the Customer to RIS for



testing and repair. The measured unavailable time ends when the affected Service is restored. RIS will notify the Customer by telephone and the Customer will confirm that the affected Service has been restored. Additional time taken by the Customer to perform confirmation testing is not included in the measured unavailable time if the Service is in fact restored. The Customer acknowledges that although RIS does monitor use of the Enterprise Backup and Recovery that the Customer is responsible to notify RIS of any Outages or other service issues.

- D. Data Retention Time (DRT). All backup data will be retained over a 5 week cycle and monthly backup sets will be retained for 52 weeks. Customer data will therefore age and new data will overwrite data that exceeds its retention period.
- E. Recovery Point Objective (RPO). Data backup occurs at a fixed point in time according to a schedule agreed upon between RIS and Customer. Any data that exists between backups is vulnerable. The length of time between backups is the Recovery Point Objective. This is the point back in time to which a Customer's data must be recovered. This will be 24 hours since backups take place daily.
- F. Database Recovery Point Objectives (RPO). *This section is a placeholder for newly developed database backup standards. Applying best practices in combination with backup database agent functionality will have great impact on how databases are backed up throughout the region.*
- G. Recovery Time Objective (RTO). This is the maximum elapsed time required to complete the recovery of customer's data. RTO is a function of the size of the data delivery circuit and the total amount data to be recovered. In most cases where the total data recovered is less than 1 terabyte this could be 6, 12 or 24 hours if the Customer environment is properly functioning and ready to receive data. RTO objectives should be discussed with RIS LSS backup administrators. An RTO measurement can begin only when a customer environment is properly functioning and ready to receive data.

3.0 Service Fee Structure

The backup and restore service charges are based on x dollars per gigabytes backed up and line item charges for hardware and software additions per quarter.



The "per gigabytes backed up" fee covers the original cost of the system, system maintenance, and all media and ongoing media purchases as the system grows. Line item charges will be assessed per agency and cover items like backup agents and tape libraries.

Contact a dept. or refer to a document for service fee details, or do we apply all details here?

4.0 Performance and Reporting

4.1 Key Performance Indicators

Details of the expected responsiveness of the IT Service (e.g. restore response times, details of expected service throughput on which targets are based).

Backup Success Rates

Backup Throughput (will be provided first through performance testing)

Restore Success Rates

Restore Throughput (will be provided first through performance testing)

4.2 Report(s) available for KPI

Detail any reporting service(s) available that show KPI or service level compliance (when solution has been decided upon)

4.3 Other reports

Fee for service reports

Change control reports

Backup and Restore statistics and trending Reports

4.4 Reporting Schedule

Daily, weekly, monthly, or Quarterly based on customer need and report availability.

More details will follow when the backup and restore solution has been decided upon.

5.0 Security

Brief mention of and/or reference out to the organization's Security Policy (covering issues such as password controls, security violations, unauthorized software, viruses etc). Details of any specific responsibilities on both sides (e.g. HIPPA CJIS). This will be more clear when the solution is decided upon.

6.0 Service Availability

Planned or unplanned interruption of services (down time); Backup and restore service availability goals are 98%, or a max of 14.6 hours down time per month.

6.1 Availability Exemptions

Degradation in the performance of the Services and unavailable time shall not be included for the purposes of determining whether the Services meet the minimum



service requirements, or for calculating measured unavailable time if such degradation or unavailable time arises from: (i) Scheduled Maintenance or other service interruptions agreed to by the Customer for the purpose of allowing RIS to upgrade, change, implement an order, maintain, or repair the Services or related services.

6.2 Maintenance

- A. Scheduled Maintenance means any maintenance activities performed by RIS provided that Customer shall be given at least 1 business days' advance notice of such maintenance activities. Such activities are typically performed during the standard maintenance windows for the backup and restore system on Mon-Friday 8am-5pm and Sat-Sunday. Notice of scheduled maintenance shall be given to Customer's designated Point of Contact (POC) on the Customer Support Contact Form and any amendments thereto, by a method elected by RIS (telephone, e-mail, fax or pager). The Customer may change its POC upon reasonable advance written notice to RIS.
- B. Unscheduled maintenance means any maintenance activities performed by RIS as a result of a Threat or an Emergency. A Threat is defined as a situation or condition that would not normally cause an outage to a customer but introduces a very low risk to services or may lead to a brief service interruption of less than 30 minutes. In the event of an Emergency (defined as unplanned critical repairs, as a result of damage that has caused or could cause a degradation or interruption of service) RIS will make best efforts to provide customers with notice and an estimated time to repair.

7.0 Business Continuity

7.1 Business Continuity (Disaster Recovery) for customer data

Minimal DR has been implemented in the form of offsite tape rotation to protect customer data. Full data sets will go offsite weekly and return times scheduled in coordination with Data Retention Times, Section 2.2, paragraph D.

Data recovery services in the event of a "disaster" for the region or any combination of customers would fall outside the scope of this service definition document. RIS is eager to develop a detailed disaster recovery plan with any and all customers which would rely on the data backup and restore services.

7.2 Business Continuity (Disaster Recovery) for the service

The weekly offsite tape rotation will include a recovery plan and recovery data for the backup and restore service itself.

8.0 Service Review and Change Management

8.1 Review

This service will be reviewed annually or upon request in accordance with the standard review process. (Refer to the service review documentation at TBD)



8.2 Change Control

Any changes to the service are governed by the change control process. (Refer to the service change control documentation at TBD)

9.0 Glossary

Explanation of any unavoidable abbreviations or terminology used, to assist Customer understanding.

APPENDIX C

Business Associate Agreement

Business Associate Agreement/Amendment
HIPAA Privacy and Security Rules

This agreement ("Agreement/Amendment") is entered into by Lane County, a political subdivision of the State of Oregon ("County") and _____ ("Contractor").

A. RECITALS

1. Contractor is providing services to a County program designated as a covered healthcare component and such services will require disclosure and use of Protected Health Information ("PHI"), including electronic PHI, as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

2. HIPAA Privacy and Security Rules require that covered entities obtain satisfactory assurances that its Business Associates will comply with the Business Associate requirements of the Privacy Rule set forth in 45 CFR 164.502(e) and 164.504(e), and the Security Rule set forth in 45 CFR 164.314, and Contractor desires to provide such business associate assurances with respect to the performance of its obligations.

B. DEFINITIONS

"Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and generally means the person who is the subject of protected health information. It also includes a person who qualifies as a personal representative pursuant to 45 CFR 164.502(g).

"Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, and as these may be amended from time to time.

"Protected Health Information" shall have the same meaning as the term "Protected Health Information" in 45 CFR 164.501, limited to the information created, received, or accessed by Contractor from or on behalf of the Agencies through performance under the Contract. Generally, it relates the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual and identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual.

"Required by law" shall have the same meaning as the term in 45 CFR 164.501.

"Secretary" shall mean the Secretary of the federal Department of Health and Human Services (HHS) and any other HHS officer or employee with delegated authority.

"Security Rule" shall mean the standards for security of PHI in "Subpart C - Security Standards for the Protection of Electronic Protected Health Information", beginning 45 CFR § 164.302, and particularly requirements for business associates in 45 CFR § 164.308(b) and 45 CFR § 164.314(a). The Security Rule is a subpart of the Privacy Rule.

"Service contract" shall mean the agreement between County and the Contractor obligating Contractor to perform certain services.

Capitalized terms, other than those defined in this Agreement/Amendment, shall have the same meaning as those terms in the Privacy and Security Rules.

C. USES AND DISCLOSURES IN PERFORMING SERVICES

1. The parties agree that the following terms and conditions shall apply to Contractor's performance of obligations under the Service Contract.

2. Contractor is authorized to access, receive, use or disclose PHI for the express purpose of performing the services under the Contract. Except as otherwise expressly permitted and as limited in this Agreement/Amendment or as Required by Law, Contractor may use or disclose PHI to perform the functions, activities or services for, or on behalf of, the County, set forth in the Contract and provided that such use or disclosure would not violate the Privacy or Security Rules or the applicable minimum necessary policies of the County if done by the County. Contractor shall access, receive, transmit, use, or disclose only the minimum necessary PHI to fulfill its obligations to the County or as imposed by law. Further use or disclosure other than as permitted or required by the Contract or as Required by Law is prohibited.

D. ADDITIONAL BUSINESS ASSOCIATE OBLIGATIONS OF CONTRACTOR

1. Contractor shall implement administrative, physical and, technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI that it accesses, receives, or transmits on behalf of the County. Contractor agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement/Amendment.

2. Except as otherwise limited in this Agreement/Amendment, Contractor may use PHI for the proper management and administration of its business or to carry out its legal responsibilities.

3. Except as otherwise limited in this Agreement/Amendment, Contractor may disclose PHI for the proper management and administration of its business, provided that disclosures are required by law, or Contractor obtains reasonable assurances from the recipient that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed, and the recipient will promptly notify the Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

4. Contractor may use PHI to report violations of HIPAA law to certain federal or state authorities subject to the conditions in 45 CFR §164.502(j)(1).

5. Contractor may not aggregate or compile PHI accessed or received under the Contract with the PHI of other entities unless this Agreement/Amendment permits Contractor to perform Data Aggregation services. Under no circumstances may Contractor disclose PHI of the County to another person, entity, or agency absent express authorization of the County.

6. Contractor agrees to report to the County any use or disclosure of PHI not provided for by this Agreement/Amendment of which it becomes aware, as soon as possible.

7. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor that violates the requirements of this Agreement/Amendment. Contractor agrees to report to the County, the remedial action taken or proposed to be taken with respect to such use or disclosure. Contractor agrees to cooperate with the County in any mitigation efforts County requests and deems appropriate.

8. Contractor agrees to ensure that any agent, including any subcontractor to whom it provides PHI or makes PHI available, executes an agreement with the same terms, conditions, and restrictions of the use and disclosure of PHI as contained in this Agreement/Amendment. This includes ensuring that any agent, including subcontractor, agrees to implement reasonable and appropriate safeguards to protect electronic PHI.

9. The parties do not anticipate that, at any point in time, the County will be unable to access and control PHI or that any change to PHI required below would affect Contractor's performance under the Service Contract. However, in the event Contractor does have access and control of PHI:

a. At the request of the County and within five business days, and unless directed otherwise, Contractor shall provide access of their PHI to an Individual to meet the requirements under 45 CFR § 164.524.

b. Contractor shall make any amendment(s) to PHI that the County directs or agrees to pursuant to 45 CFR § 164.526 at the request of the County or an Individual.

c. Contractor shall document such disclosures of PHI and information related to such disclosures as are required for the relevant County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Contractor shall provide the accounting to the County or to an Individual as directed by the County, within five business days.

d. As to Contractor's obligations in 9. a., b., and c. above, Contractor shall document and retain for six years from the date of creation or date last in effect, whichever is later:

i. The titles of the person or offices responsible for receiving and processing requests for access, for amendments, and for accounting of disclosures; and
ii. The PHI that are subject to access by individuals under 45 CFR 164.524, subject to the County's direction otherwise;

iii. The written accounting that is provided to the individual;

iv. The information required to be included in the accounting in paragraph (c) above.

10. Contractor agrees to make internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI received from, or created or received by, or made available or accessed by Contractor on behalf of the County, available to the County or to the Secretary within five business days or within the time frame designated by the Secretary, for purposes of the Agencies or Secretary determining the County's compliance with the Privacy and Security Rules, or for audit purposes.

E. OBLIGATIONS OF AGENCIES

1. The County shall notify Contractor of any additional limitations, to the extent that the limitation may affect Contractor's access, receipt, use or disclosure of PHI of that County.

2. The County shall notify Contractor of any changes in, or revocation of, permission by Individual to access, receive, use or disclose PHI, to the extent that the changes may affect Contractor's use or disclosure of PHI.

3. The County shall notify Contractor of any restriction to the access or use or disclosure of PHI, that the County has agreed to in accordance with 45 CFR § 164.522, to the extent that the restriction may affect Contractor's access, receipt, use or disclosure of protected health information.

4. The County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rules if done by the County.

F. TERM AND TERMINATION

1. The term of this Agreement/Amendment shall begin the date the last party signs this Agreement/Amendment, and shall terminate when all of the PHI provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, and all ability to access such information is terminated, or if it is infeasible to return or destroy PHI, protections are extended to the information in accordance with the termination provisions in this Agreement/Amendment.

2. Upon any Agency's knowledge of a material breach by Contractor or violation of Contractor's obligations under this Agreement/Amendment, the County may:

a. Notify Contractor of the breach and specify a reasonable opportunity in this notice for Contractor to cure the breach or end the violation, and terminate this Agreement/Amendment if the Contractor does not cure the breach or end the violation within the time specified by the Agency. The Service Contract, including any amendments, would also be subject to termination; or

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- b. Immediately terminate this Agreement/Amendment, if the Contractor has breached a material term of this Agreement/Amendment and cure is not possible in the County's reasonable judgment. The Service Contract, including all amendments, would also be subject to immediate termination; or
 - c. If neither termination nor cure is feasible, the County shall report the violation to the Secretary;
 - d. The County's remedies under this Agreement/Amendment are cumulative and the exercise of any one remedy shall not preclude the exercise of any other.

3. This Agreement/Amendment terminates when the Service Contract terminates.

4. Except as provided in paragraph 5 or 6 of this section, upon termination of this Agreement/Amendment, for any reason, Contractor shall, at the County's option, return or destroy all PHI belonging to the County, or created or received by Contractor on behalf of the County if in Contractor's possession. This provision shall apply to PHI that is in the possession of subcontractors or agents of Contractor. Contractor and subcontractors or agents shall not retain any copies of the PHI.

5. In the event that Contractor determines that returning or destroying PHI is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon written agreement by the County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Agreement/Amendment to such PHI and limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI.

6. If it is infeasible for the Contractor to obtain any PHI in the possession of a subcontractor or agent, the Contractor shall provide the notification in 5 above within five business days upon learning of the infeasibility. The Contractor shall require the subcontractor or agent to agree to extend the protections as in 5 above.

G. MISCELLANEOUS

1. Nothing in this Agreement/Amendment shall be construed as requiring the County to comply with the Security Rule requirements for covered entities prior to the applicable federal compliance deadline.

2. Amendment; waiver.

a. The parties agree to take such action as is necessary to amend this Agreement/Amendment from time to time in order for the County to comply with the requirements of the HIPAA Privacy and Security Rules. The parties agree that any modifications to those laws shall modify the obligations of the parties to this Agreement/Amendment without the need for formal amendment of this Agreement/Amendment. Any other modifications, alterations, variations, or waivers of any provisions shall be valid only when then have been executed in writing.

b. No provision in this Agreement/Amendment shall be deemed waived unless in writing, and duly executed. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this Agreement/Amendment.

3. Survival. The respective rights and obligations of the parties under the following paragraphs shall survive the termination of this Agreement/Amendment:

a. Paragraph 9d of the section "ADDITIONAL BUSINESS ASSOCIATE OBLIGATIONS OF CONTRACTOR"

b. Paragraphs 4, 5, and 6 of the section "TERM AND TERMINATION"

c. Paragraphs 2b, 3, 4, 5, 7, 8, and 9 of the section "MISCELLANEOUS" shall survive the termination of this Agreement/Amendment.

4. Interpretation; order of precedence. Any ambiguity in this Agreement/Amendment shall be resolved to permit the County to comply with HIPAA and the regulations promulgated in support. The

terms of this Agreement/Amendment supplement the terms of the Service Contract and, whenever possible, all terms and conditions of this Agreement/Amendment and the Service Contract are to be harmonized. In the event of a conflict between the terms of this Agreement/Amendment and the terms of the Service Contract, the terms of this Agreement/Amendment shall control, provided that this Agreement/Amendment shall not supersede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict between the provisions of the Service Contract as amended by this Agreement/Amendment and the Privacy or Security Rules, the Privacy and Security Rules shall control.

5. Indemnity. In addition to any other indemnification obligations of Contractor in the Contract, Contractor shall save, hold harmless, and indemnify the County and its Commissioners, officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from or arising out of Contractor's, or its agent's or subcontractor's performance or failure to perform under this Agreement/Amendment, including but not limited to, unauthorized use or disclosure of PHI.

6. Insurance. Contractor shall provide a certificate of insurance establishing coverage for Contractor's activities under this Agreement/Amendment.

7. Independent Contractor. Contractor will function as an independent contractor and shall not be considered an employee of the County for any purpose. Nothing in this Agreement/Amendment shall be interpreted as authorizing Contractor or its agents, subcontractors and/or employees to act as an agent or representative for or on behalf of the County.

8. Successors and Assigns. The provisions of this Agreement/Amendment and the Contract shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns, if any. Neither the obligations under this Agreement/Amendment, nor the responsibilities for providing services, shall be assigned or delegated by Contractor without the prior written consent of the County.

9. No Third-Party Beneficiaries. The County and Contractor are the only parties to this Agreement/Amendment and are the only parties entitled to enforce its terms. Nothing in this Agreement/Amendment gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to any other third parties.

10. Notices. Any notices between the parties or notices to be given under this Agreement/Amendment shall be given in writing by personal or overnight courier delivery, or by mailing by certified mail with return receipt requested, to Contractor or to the County, to the addresses given for each below or to the address either party gives to the other. Any notice so addressed and mailed shall be deemed given five days after mailing, or by facsimile. Any notice delivered by personal or overnight courier delivery shall be deemed given upon receipt. Any notice by facsimile shall be deemed given upon confirmation that notice was received.

Contractor:

County:

11. Except as Amended. Except as amended by this Agreement/Amendment, all terms and conditions of the Service Contract, including any prior amendments shall remain in full force and effect.

12. Signatures. By signing the Agreement/Amendment, the parties certify that they have read and understood this Agreement/Amendment and that they agree to be bound by the terms of this Agreement/Amendment.

13. This Agreement/Amendment may be executed in any number of counterparts, all of which taken together shall constitute one agreement binding on all parties, notwithstanding that all parties

are not signatories to the same counterpart. Each copy of this contract so executed shall constitute an original.

Contractor

County

Date:

Date: