

**AGREEMENT FOR
PAVEMENT MANAGEMENT SERVICES
(Yamhill County and Capitol Asset & Pavement Services, Inc.)**

THIS AGREEMENT ("Agreement"), is made by and between Yamhill County ("County"), a political subdivision of the State of Oregon, and Capitol Asset & Pavement Services, Inc., an Oregon corporation, located at 204 N. First St., Suite C, Silverton, Oregon 97___ ("Contractor").

RECITALS:

- A. County, through its Public Works Department, has determined the need for a comprehensive review, inspection and rating of its county road system and that it is necessary for County to contract with a qualified consultant with training and expertise in providing such road system reviews (the "Project").
- B. County has budgeted funds to perform the Project. County conducted a competitive quote process to select the most qualified consultant to provide the services described herein.
- C. Contractor was the most qualified proposer and is qualified to provide the required road system review services and to perform the other related duties required by County and imposed by this Agreement. County and Contractor desire to enter into this Agreement and County is authorized to enter into this Agreement under ORS 203.010(3). NOW, THEREFORE

AGREEMENT:

In exchange for the promises and other consideration as set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **Services of Contractor.** Contractor agrees to perform the following services (the "Services"), in accordance with and as detailed in County's request for quotes and Contractor's response in the form of a Competitive Quote, both of which are contained in Exhibit A, which is attached hereto and incorporated herein by this reference. Any additional work beyond the Services may be negotiated individually at Contractor's hourly rate or at a negotiated project rate. Services under this Agreement will be provided at the request of the County during normal working hours (8 a.m. to 5 p.m., Monday through Friday), or different if specifically stated herein, provided that County will give a minimum of 24 hours notice of its intention to use Contractor's services, but that the notice requirements may be waived at the sole discretion of Contractor.
2. **County's Duties.** If any Services are provided at County offices, County shall provide the office space, terminals, telephone, office equipment, office furniture, computer hardware and software, and fixtures necessary to perform Services.
3. **Independent Contractor.** Contractor is engaged hereby as an independent contractor, and will be so deemed for purposes of the following:
 - a. Contractor will be solely responsible for payment of any federal or state taxes required as a result of this Agreement. County will not withhold any state or federal income taxes from payments owed Contractor.
 - b. As an independent contractor, Contractor acknowledges and agrees that Contractor is not entitled to any benefits granted to County employees. Without limitation, but by way of illustration, the benefits which are not granted to Contractor include vacation, holiday and sick leave, other leaves with pay, tenure, medical, and dental coverage, life and disability insurance, overtime, Social Security,

Workers' Compensation, unemployment compensation, or retirement benefits, except as otherwise required by law.

c. Contractor is an independent contractor for purposes of the Oregon Workers' Compensation law (ORS Chapter 656) and is solely liable for any Workers' Compensation coverage under this Agreement. If Contractor has the assistance of other persons in the performance of this Agreement, Contractor will qualify and remain qualified for the term of this Agreement as a carrier-insured employer or a self-insured employer under ORS 656.403 et. seq.

4. Compensation; Payment Schedule. Unless previously terminated in accordance with Section 8, Contractor will provide the Services for a total fixed fee of \$25,960.00, inclusive of reimbursable expenses. Contractor shall be compensated in the amount of the total fixed fee for Services rendered under this Agreement, which amount shall also be the maximum not-to-exceed amount to be paid under this Agreement unless this Agreement is amended or extended in a writing signed by both parties. The above rates are inclusive of any per diem rates described on Exhibit A. Any expenses incurred by Contractor in the performance of the Services under the terms and conditions of this Agreement not specifically provided for herein shall be the sole and separate responsibility of Contractor, unless preapproved in writing by County. The only compensation due Contractor is specifically stated in this Agreement. Payment will be made by County check or electronic fund transfer to Capitol Asset & Pavement Services Inc. (FEIN# 26-1549572). Payment is conditioned upon (hours of service rendered, services performed) during the predetermined period (month/week/day). If an invoice is received after the due date specified on the invoice, payment may be deferred until the succeeding month without penalty or interest. Contractor agrees to send one (1) single invoice to the County so payment made be made in one (1) single lump sum payment upon satisfactory completion of afore mentioned services

5. INDEMNIFICATION. CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS COUNTY AND EACH OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM CONTRACTOR'S PERFORMANCE OF THE SUBJECT WORK AND SERVICES UNDER THIS AGREEMENT OR CREATED BY ANY ACT OR ERROR OF A VENDOR, SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR; PROVIDED HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE INDEMNIFICATION OF YAMHILL COUNTY FOR LIABILITY ATTRIBUTABLE TO YAMHILL COUNTY'S SOLE NEGLIGENCE.

6. Insurance. Contractor, at Contractor's own expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this Agreement plus two years):

- a. Workers' Compensation Insurance in compliance with statutory requirements;
- b. Commercial General Liability Insurance (including contractual liability and completed operations coverage, and coverage for liability resulting from hazardous substances), on an occurrence basis, with not less than \$2,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$3,000,000;
- c. Professional Liability Insurance, including Errors and Omissions coverage, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to the Project work or Services provided under the Agreement.
- d. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Contractor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Contractor in connection with the Services.

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to County. At County's request, Contractor shall furnish County with certificates of insurance for each of the required insurance coverages. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to County.

The Commercial General Liability and Commercial Automobile Liability shall (i) name County, its directors, officers, and employees, as additional insureds, (ii) provide that it is primary insurance with respect to the interests of County and that any insurance maintained by County is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause.

7. Private Business. Contractor shall not operate any private business from any County property, nor shall Contractor utilize any County property for Contractor's private business, except to perform the Services described in this Agreement, however, phone calls received or made by Contractor using County equipment and while on County property shall be allowed only on an emergency, occasional basis. If a long distance telephone call is made on an emergency, occasional basis, it shall be charged to Contractor's private business telephone number or credit card.

8. Term; Termination; Default.

a. Term. Unless terminated in accordance with subsection (2), the term of this Agreement is from August 7, 2020 through November 30, 2020 and supersedes any prior agreements between the parties regarding the subject matter.

b. Termination. Either party may terminate this Agreement on ten (10) calendar days written notice to the other party. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement, it will provide written notice of immediate termination of this Agreement to Contractor. Upon issuance of notice, this Agreement is terminated. However, any obligations existing at the time of termination will survive termination. Contractor shall not make expenditures, enter into agreements, or encumber funds in its possession, or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County. Termination shall not excuse liabilities incurred prior to the termination date.

c. Default. If Contractor defaults in the performance of any of its material obligations under this Agreement for a period of thirty (30) days after the County sends notice of such default to the address on this Agreement, County may, at its option, terminate the Agreement, such termination to be effective immediately upon expiration of the thirty day notice period; provided, however, that in the event Contractor provides written notice to County that the default cannot reasonably be cured by Contractor within said thirty (30) day period and the Contractor provides written certification that it is, in good faith, endeavoring to cure said default, then the thirty (30) day cure period shall be extended for an additional reasonable period to allow for such cure, but any such extended period shall not exceed 30 additional days, unless otherwise mutually agreed in writing by both County and Contractor.

9. Confidentiality. Contractor acknowledges that Contractor may, in the course of its performance under this Agreement, be exposed to or acquire information that is the confidential information of County or County's clients. Any and all (i) County or County client information, (ii) information provided by County and marked confidential, or (iii) information identified as confidential in a separate writing, that becomes available to Contractor in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items, including software, that result from Contractor's use of the Confidential Information are also deemed Confidential Information. Contractor agrees to hold Confidential Information in strict confidence, using at least the

same degree of care that Contractor uses in maintaining the confidentiality of Contractor's own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information for any purposes whatsoever, except as may be provided elsewhere under this Agreement or in conformance with Exhibit A. Contractor agrees that, upon termination of this Agreement or at County's request, Contractor will turn over to County all documents, papers and other matter in Contractor's possession that embody Confidential Information.

10. Compliance with Applicable Laws; Compliance with Tax Laws. Contractor agrees to comply with the rules and regulations of County, applicable state and federal regulations and all other provisions of state and federal law relating to Contractor's performance of Services under this Agreement. To the extent applicable Contractor certifies it shall comply with all applicable Public Contract Laws to include ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and 279C.580 (3) and (4). ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and ORS 279C.580(3) and (4) are incorporated into this Agreement by reference. Contractor will provide Services to County clients without regard for race, color, creed, religion or national origin in compliance with Title IV, Civil Rights Act, 1954. Further, Contractor certifies compliance with the tax laws of the State of Oregon or a political subdivision of the state, including ORS 305.620 and ORS Chapters 316, 317 and 318.

11. Ownership and Rights.

a. Ownership of Work Product by County. All work product, including but not limited to the Deliverables listed in Exhibit A ("Work Product") shall be exclusively owned by County and shall be considered works made for hire by Contractor for County. Except as set forth below, County shall exclusively own all United States and international copyrights and all other intellectual property rights in the Work Product.

b. Vesting of Rights. With the sole exception of any Preexisting Works, as defined and identified below, Contractor agrees to assign, and upon creation of Work Product automatically assigns, to County, its successors and assigns, ownership of all United States and international copyrights and all other intellectual property rights in such Work Product. This assignment is undertaken in part as a contingency against the possibility that any such Work Product, by operation of law, may not be considered a work made for hire by Contractor for County. From time to time, upon County's request, Contractor and/or its personnel shall confirm such assignments by execution and delivery of such assignments, confirmations of assignments, or other written instruments as County may request. County and its successors and assigns shall have the right to obtain and hold in its own name all copyright registrations and other evidence of rights that may be available for Work Product and any portions thereof.

c. Preexisting Works. In the event that any portion of the Work Product constitutes a preexisting work for which Contractor cannot grant to County the rights set forth above, Contractor shall specify below: (1) the nature of such preexisting work; (2) its owner; (3) any restrictions applicable to Contractor's or County's use of such preexisting work; and (4) the source of Contractor's authority to employ the preexisting work in the preparation of the Work Product. Any works that satisfy the above requirements shall be considered as "Preexisting Works." The only Preexisting Works that may be used in any Work Product are the Preexisting Works specified herein, if any, and any Preexisting Works that may be approved in writing by County prior to use.

d. Grant of License. Contractor hereby grants to County a non-exclusive, royalty-free, worldwide, perpetual and irrevocable license to the Preexisting Works and to any Contractor source code or other Contractor software utilized in any Work Product or Preexisting Work.

12. Subcontracts; Assignment. Contractor shall not enter into any subcontracts for any of the Services required under this Agreement without County's prior written consent. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld).

13. Governing Law; Jurisdiction; Venue. This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of Oregon without regard to its conflicts of laws rules. Any claim, action, suit or proceeding between County and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Oregon for Yamhill County. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THIS FORUM IS AN INCONVENIENT FORUM.

14. Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

15. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

16. Attorney Fees. In the event of legal suit or action, including any appeals therefrom, brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions under this Agreement, each party shall pay their own attorney's fees and costs incurred in the suit or action, including investigation costs, expert witness fees and all costs of depositions.

17. Severability. If any term of this Agreement is held to be invalid or unenforceable, it shall be severed from this Agreement and the balance of the Agreement shall be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.

18. No Third Party Beneficiaries. Except as expressly provided herein, nothing contained in this Agreement is intended, nor shall it be construed to create rights for the benefit of third parties.

19. Certification of reading and understanding of documents; Precedence. The Contractor hereby certifies it has read and fully understands and this Agreement and Contractor accepts this Agreement and its terms and conditions, including solicitation documents. The Contractor understands and acknowledges that in signing this Agreement the Contractor waives all rights to plead any misunderstandings regarding the same. **In the event of a discrepancy or inconsistency between Contractor's proposed "Statement of Work" or any other contract document, including "Structured Standard Terms and Conditions" and this Agreement, this Agreement shall take precedence.**

20. Exhibits and Recitals. All exhibits and schedules referenced herein are incorporated herein. The recitals set forth above are incorporated into this Agreement as a material and substantive part of this Agreement.

21. Time is of the Essence. Time is of the essence in the performance of this Agreement. However, if the Contractor is delayed by causes outside its control, any governing schedule shall be extended by a reasonable time.

22. Status of the Project Supervisor. Steve Warden is the Project Supervisor (the "Supervisor"). The Supervisor or his designee shall perform technical inspections of Services and shall have authority to stop the Services whenever such stoppage shall be necessary to insure proper execution of the Agreement. The Supervisor or his designee may reject all Services and materials that do not conform to the Agreement and shall decide questions that arise in the execution of the Project Services. The Supervisor has authority to reject or accept the Project Services.

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23. Prohibition of Discrimination. In hiring employees or subcontractors for performance of Services under this Agreement neither Contractor, any subcontractor or any other person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap or sex discriminate against a person who is qualified and available to perform Services to which employment relates.

24. Integration. This Agreement, along with its Exhibits, constitutes the entire agreement between and among the parties, integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

THIS AGREEMENT CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

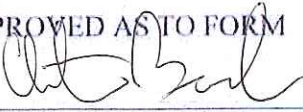
IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth adjacent to their signatures below.

**CAPITOL ASSET & PAVEMENT
SERVICES, INC.**

Joel M. Condee 
Print Name/ Title Vice President
Date: 7-20-2020

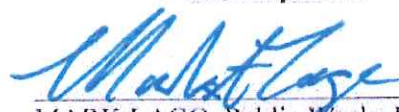
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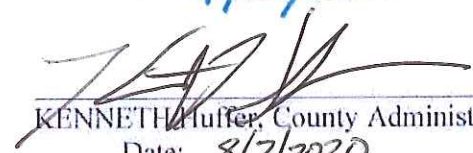
APPROVED AS TO FORM

By: 
CHRISTIAN BOENISCH
County Counsel

YAMHILL COUNTY, OREGON


CASEY KULLA, Chair
Board of Commissioners
Date: 8/6/2020


MARK LAGO, Public Works Director
Date: 7/30/2020


KENNETH HUFFER, County Administrator
Date: 8/7/2020

Accepted by Yamhill County
Board of Commissioners on
8/6/2020 by Board Order
20-259

Exhibit A

Contractor agrees to perform services as a contractor. Contractor's duties include:

- a. Segment and inspect all new County roads and enter into the Streetsaver database
- b. Perform a detailed distress rating on all County roads within the Streetsaver database
- c. Supply to the County three (3) hardbound comprehensive 'Budget Options Reports'
- d. Perform at least four (4) hours of onsite Streetsaver computer training, if requested.