

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Approving a Professional Services Contract with Nelson\Nygaard Consulting in the amount of \$158,329, with a maximum not-to-exceed amount of \$175,000

BOARD ORDER 23-71

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on February 23, 2023, Commissioners Lindsay Berschauer, Kit Johnston, and Mary Starrett being present.

IT APPEARING TO THE BOARD as follows:

WHEREAS, The Board tentatively approved an agreement with Nelson/Nygaard Consulting on June 9, 2022 for the Bus Stop Installation Project and authorized County Counsel to finalize the professional service agreement not-to-exceed \$120,000; and

WHEREAS, The agreement has increased to \$175,000 and the indemnity language have changed since the Board's prior approval, and therefore, the agreement requires additional approval from the Board; and now, therefore

IT IS ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The agreement with Nelson\Nygaard as provided in the attached Exhibit 1 is hereby approved.

Section 2. Cynthia Thompson, Yamhill County Transit Area Manager, is hereby delegated authority to sign the agreement on behalf of Yamhill County.

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DATED this 23rd day of February, 2023, at McMinnville, Oregon.

ATTEST

YAMHILL COUNTY BOARD OF  
COMMISSIONERS



KERI HINTON  
County Clerk

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Chair LINDSAY BERSCHAUER

By:   
Deputy CAROLINA ROOK

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Commissioner KIT JOHNSTON

FORM APPROVED BY:

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JODI GOLLEHON  
Assistant Yamhill County Counsel

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Commissioner MARY STARRETT

Accepted by Yamhill County  
Board of Commissioners on  
2.23.23 by Board Order  
# B.O. 23-71

**PROFESSIONAL SERVICE AGREEMENT**  
**Nelson\Nygaard Consulting Associates**

THIS AGREEMENT (“Agreement”) is between **Yamhill County** (County), a political subdivision of the State of Oregon, acting through the Yamhill County Transit Area (YCTA) and **Nelson\Nygaard Consulting Associates** (“Consultant”), located at (address here)

**RECITALS**

1. County, through its Yamhill County Transit Area, an ORS 451 County Service District, furnishes and operates public transportation services. In order for the County to provide these public transportation services it is necessary for the County to contract with qualified Consultants with expertise in: Transit Planning and Public Engagement Services and Program Development and Project Management. In order to provide adequate customer amenities, the County/YCTA is seeking to establish a personal services agreement with a Consultant, to provide one or more of the following: Transit Planning and Public Engagement Services and Program Development and Project Management.
2. Consultant is licensed as required by law and is qualified to perform the duties outlined in this Agreement. County is authorized to enter into this agreement under ORS 203.010(3). NOW THEREFORE

**AGREEMENT**

In exchange for the promises and other consideration set forth below, IT IS HEREBY AGREED:

**Section 1. Effective Date.** The term of this Agreement is from May 1, 2022 through June 30, 2025, unless terminated in accordance with Section 5 below. It is understood by both parties that no commitments have been or are made by either party beyond the termination of this Agreement.

**Section 2. Services.** Consultant agrees to perform the services (“Services”) included in the Statement of Work attached as Exhibit A to this Agreement which is incorporated herein by this reference.

**Section 3. Reporting.** County and Consultant agree to prepare and furnish reports to each other upon request. County and Consultant agree to and do hereby grant to each other the right to reproduce, use and disclose for each party’s internal administration purposes only, all or any part of the reports, data, and technical information furnished under the Agreement.

**Section 4. Payment.** County agrees to pay Consultant for the Services provided under this Agreement for Phases 1, 2, and 3 of the bus stop installation project **\$158,329.00**. This does not include the optional tasks outlined in the proposal. No minimum number of hours is guaranteed by this Agreement. The maximum amount to which the County is obligated to pay under this Agreement is **\$175,000.00**. Yamhill County shall make payment to consultant no later than the 30th day of the month following receipt, review and approval of an itemized statement for Services provided in the preceding month.

**Section 5. Termination; No Encumbrance or Expenditure after Notice of Termination.**

A. Either party may terminate this Agreement upon sixty days written notice to the other party. Termination shall not excuse liabilities incurred prior to the termination date. B.O. 23-71

out above, without prior written approval from County.

**Section 6. Independent Consultant.** Consultant is engaged under this Agreement as an independent Consultant, and will be so deemed for purposes of the following:

A. Consultant will be solely responsible for payment of any federal or state taxes required as a result of this Agreement.

B. This Agreement is not intended to entitle Consultant to any benefits typically granted to County employees. Without limitation, but by way of illustration, the benefits that are not intended to be extended by this Agreement to Consultant are 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 required by law.

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

**Section 7. Compliance with Applicable Laws.** Consultant 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 Consultant's performance of Services under this Agreement. To the extent applicable Consultant certifies it will comply with ORS 279B.220 through 279B.235, and Federal 2 C.F.R including § 200.211; 200.213, 200.327; 200.333; 200.336; and Appendix II (A-F). These provisions are hereby incorporated into this Agreement by reference. Further, Consultant 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. Consultant will provide services to County clients without regard for race, color, religion, disability or national origin in compliance with Title VI, Civil Rights Act, 1954 and the ADA.

**Section 8. Indemnification.** Consultant agrees to indemnify and hold harmless, save and defend County, its officers, and employees against any and all damages, costs, losses, fees, expenses or judgments resulting from, arising out of or connected with any such injury or the Services provided by Consultant but only to the extent the same are caused by the breach of the Standard of Care or the negligent acts or omissions of the Consultant, its employees, and its agents in the performance of professional services pursuant to this Agreement. In the event that the Consultant is ultimately found to not have been negligent in the performance of professional services, then, to the extent Consultant has covered the County's costs of defense resulting from, arising out or connected with the Consultant's professional services, the County will reimburse the Consultant in those amounts.

**Section 9. Insurance.** Consultant, at Consultant's expense, shall obtain the following insurance coverage and keep such coverage 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, subject to the terms, conditions and exclusions), on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability,

with an annual general aggregate limit of \$2,000,000 and products/completed operations aggregate limit of \$2,000,000;

C. RESERVED

D. Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$250,000 per accident, for bodily injury and property damage with respect to Consultant's vehicles, whether owned, hired, or non-owned, or used by Consultant in connection with the Services;

The Commercial General Liability Insurance shall (i) name the County, its directors, officers, employees and agents as additional insureds and (ii) include a cross-liability or severability of interest clause and a waiver of subrogation clause but only with respect to Consultant's activities to be performed under this Agreement. Coverage must be primary and non-contributory with any other insurance and self-insurance.

The required insurance coverages shall be (i) with insurance companies authorized to do business in the state of Oregon and rated A- or better by Best's Insurance Rating, and (ii) reasonably acceptable to County. At County's request, Consultant 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 the named insured 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, except 10 days' notice for non-payment of premium, written notice to County.

**Section 10. No Federal Obligation.** The Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Consultant or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

**Section 11. Subcontracts; Assignment.** Consultant shall not enter into any subcontracts for any of the Services required under this Agreement without County's prior written consent. This Agreement shall not be assigned by Consultant without the prior written consent of County.

**Section 12. Non-discrimination.** Consultant agrees that no person shall, on the grounds of race, color, religion, national origin, sex, gender, marital status, or age, suffer discrimination in the performance of this Agreement when employed by Consultant.

**Section 13. Waiver; Remedies.** County and Consultant acknowledge that any breach, violation, or default by either party of the provisions contained in this Agreement might result in damage to the other party. 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.

**Section 14. Governing Law; Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding, (collectively "Claim") between County and Consultant that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. By execution of

this Agreement, Consultant consents to the in personam jurisdiction of the Yamhill County Circuit Court.

**Section 15. Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**Section 16. Counterparts.** This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

**Section 17. Attorney Fees and Costs.** In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be solely responsible for its own attorney's fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.

**Section 18. Entire Agreement.** This Agreement is the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written Agreement shall be valid or binding. No alterations, changes, or additions to this Agreement shall be made except in a written document signed by both parties.

**Section 19. 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.

**Section 20. MISCELLANEOUS.**

- A. Notwithstanding anything within the full scope of this Agreement to the contrary, the Consultant shall perform its services consistent with the professional skill and care ordinarily provided by transportation planning consultants or engineers practicing in the same or similar locality under the same or similar circumstances. The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project (the "Standard of Care").
- B. The Consultant and County waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver includes, but is not limited to, damages incurred by the County or Consultant for delay, for rental expenses, for loss of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or the services of such persons. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.
- C. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the County or Consultant.
- D. The Consultant shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the County and the County's other consultants. The Consultant shall provide prompt written notice to the County if the Consultant becomes aware of any error, omission, or inconsistency in such services or information.

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

**Nelson\Nygaard Consulting Associates Inc.**

**YAMHILL COUNTY, OREGON**



Jonathan Watts, Operations Director

Cynthia Thompson  
Yamhill County Transit Area Manager

Date: 1/12/2023

Date: 2/24/2023

FORM APPROVED BY:

CHRISTIAN F. BOENISCH  
County Counsel

Accepted by Yamhill County  
Board of Commissioners on  
2-23-23 by Board Order  
# 23-71