



Evelyn Minor-Lawrence

Director

DEPARTMENT OF HUMAN RESOURCES

PUBLIC SERVICES BUILDING  
2051 Kaen Road | Oregon City, OR 97045

3/30/2023

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

**Approval of a Personal Services Contract with Ogletree, Deakins, Nash, Smoak & Steward, P.C. for a Chief Negotiator for contract negotiations with the Clackamas County Peace Officers' Association and the Federation of Parole and Probation Officers represented employees. Total contract value is \$605,000 for 7 years. Funding is through budgeted County General Funds.**

<b>Previous Board Action/Review</b>	Briefed at Issues – 03/28/2023		
<b>Performance Clackamas</b>	This item aligns with Human Resource's Strategic Business Plan goals and the County's Performance Clackamas goals by building trust through good government.		
<b>Counsel Review</b>	AN	<b>Procurement Review</b>	Yes
<b>Contact Person</b>	Eric Sarha	<b>Contact Phone</b>	503-655-8292

**EXECUTIVE SUMMARY:** Clackamas County is entering successor contract negotiations with the Clackamas County Peace Officers' Association (CCPOA). The contract with Ogletree, Deakins, Nash, Smoak & Steward, P.C. is for a Chief Negotiator for the upcoming contract negotiations with the CCPOA, and for a Chief Negotiator for successor contract negotiations with the Federation of Parole and Probation Officers (FOPPO), which will begin in early 2025.

**RECOMMENDATION:** Staff recommends the Board approve the attached contract Between Clackamas County and Ogletree, Deakins, Nash, Smoak & Steward, P.C., and authorizes the Chair to sign on behalf of the County.

Respectfully submitted,

Evelyn Minor-Lawrence, IPMA-CP  
Digitally signed by Evelyn Minor-Lawrence, IPMA-CP  
Date: 2023.03.21 18:19:11 -07'00'

Evelyn Minor-Lawrence  
Director, Human Resources

For Filing Use Only



**CLACKAMAS COUNTY  
PERSONAL SERVICES CONTRACT  
Contract #7627**

This Personal Services Contract (this “Contract”) is entered into between Ogletree, Deakins, Nash, Smoak & Steward, P.C. (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of the Human Resources department.

**ARTICLE I.**

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on February 28, 2026. This Contract may be renewed for two (2) additional two-year periods upon the mutual agreement of both parties.
- 2. Scope of Work.** Contractor shall provide the following personal services: Chief Negotiator Services for Peace Officers Association and Federation of Parole and Probation Officers. (“Work”), further described in **Exhibit A**.

The relationship of Contractor to County arising out of this Contract shall be that of attorney and client. Any documents produced in performing the Work are attorney work product or privileged attorney client communications.

- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed six hundred five thousand dollars (\$605,000.00), for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit A. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Eric Sarha.

- 5. Travel and Other Expense.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, Exhibit B, and Exhibit C. Unless explicitly agreed to by the parties in this Contract, any additional terms and conditions that may be contained in Exhibit A are void.

**7. Contractor and County Contacts.**

Contractor Administrator: Kyle Abraham Phone: 503-552-2177 Email: <a href="mailto:kyle.abraham@ogletree.com">kyle.abraham@ogletree.com</a>	County Administrator: Eric Sarha Phone: 503-655-8292 Email: <a href="mailto:ESarha@clackamas.us">ESarha@clackamas.us</a>
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

**ARTICLE II.**

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise,

from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify and defend the County, and its officers, elected officials, agents, and employees, from and against all claims, actions, losses, liabilities, including reasonable attorney and accounting fees, and all expenses incidental to the investigation and defense thereof, arising out of or based upon Contractor's acts or omissions in performing under this Contract. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County, purport to act as legal representative of County, or settle any claim on behalf of County, without the approval of the Clackamas County Counsel's Office. County may assume its own defense and settlement at its election and expense.
- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, 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.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or [procurement@clackamas.us](mailto:procurement@clackamas.us).

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us). Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 10, 12, 13, 14, 15, 17, 20, 21, 25, 27, 28 and 30 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions

shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

**19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

**20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.

**21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance of this Contract.

- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
  - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
  - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
  - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
  - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 28. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential, including information that is protected under applicable law, including Personal Information (as "**Personal Information**" is defined in ORS 646A.602(11)).

Contractor agrees to hold any and all information that it is required by law or that the County marks as "Confidential" to be held in confidence ("**Confidential Information**"), using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and will use the Confidential Information for no purpose other than in the performance of this Contract, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any



person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information.

Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

**29. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.

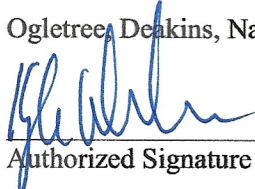


**30. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Ogletree, Deakins, Nash, Smoak & Steward, P.C.

Clackamas County



3/8/2023

Authorized Signature

Date

Chair

Date

KYLE ABRAHAM, SHAREHOLDER

Name / Title (Printed)

Recording Secretary

697948-90

Oregon Business Registry #

Approved as to Form:

FBC/South Carolina

Entity Type / State of Formation

County Counsel

03/13/2023

Date

**EXHIBIT A**  
**REQUEST FOR PROPOSAL #2023-01**  
**CHIEF NEGOTIATOR FOR**  
**PEACE OFFICERS ASSOCIATION AND**  
**FEDERATION OF PAROLE AND PROBATION OFFICERS**  
**Published January 4, 2023**



**REQUEST FOR PROPOSALS #2023-01**

**FOR  
CHIEF NEGOTIATOR FOR  
PEACE OFFICERS ASSOCIATION AND  
FEDERATION OF PAROLE AND PROBATION OFFICERS**

**BOARD OF COUNTY COMMISSIONERS**

**TOOTIE SMITH, Chair  
PAUL SAVAS, Commissioner  
MARK SHULL, Commissioner  
MARTHA SCHRADER, Commissioner  
BEN WEST, Commissioner**

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**Gary Schmidt  
County Administrator**

**Contract Analyst  
Ryan Rice**

**PROPOSAL CLOSING DATE, TIME AND LOCATION**

**DATE: January 25, 2023**

**TIME: 2:00 PM, Pacific Time**

**PLACE: <https://bidlocker.us/a/clackamascounty/BidLocker>**

## **SCHEDULE**

Request for Proposals Issued.....	January 4, 2023
Protest of Specifications Deadline.....	January 11, 2023, 5:00 PM, Pacific Time
Deadline to Submit Clarifying Questions.....	January 18, 2023, 5:00 PM, Pacific Time
Request for Proposals Closing Date and Time.....	January 25, 2023, 2:00 PM, Pacific Time
Deadline to Submit Protest of Award.....	Seven (7) days from the Intent to Award

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Section 1 – Notice of Request for Proposals
Section 2 – Instructions to Proposers
Section 3 – Scope of Work
Section 4 – Evaluation and Selection Criteria
Section 5 – Proposal Content (Including Proposal Certification)

## SECTION 1 NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that Clackamas County through its Board of County Commissioners will receive sealed Proposals per specifications until **2:00 PM, January 25, 2023** (“Closing”), to provide chief negotiator services for POA and FOPPO. No Proposals will be received or considered after that time.

### **Location of RFP documents: OregonBuys**

RFP Documents can be downloaded from the state of Oregon procurement website (“OregonBuys”) at the following address <https://oregonbuys.gov/bsv/view/login/login.xhtml>, Document No. S-C01010-00005358.

Prospective Proposers will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Proposers are responsible for obtaining any Addenda, clarifying questions, and Notices of Award from OregonBuys.

### **Submitting Proposals: Bid Locker**

Proposals will only be accepted electronically thru a secure online bid submission service, **Bid Locker**. *Email submissions to Clackamas County email addresses will no longer be accepted.*

- A. Completed proposal documents must arrive electronically via Bid Locker located at <https://bidlocker.us/a/clackamascounty/BidLocker>.
- B. Bid Locker will electronically document the date and time of all submissions. Completed documents must arrive by the deadline indicated in Section 1 or as modified by Addendum. **LATE PROPOSALS WILL NOT BE ACCEPTED.**
- C. Proposers must register and create a profile for their business with Bid Locker in order to submit for this project. It is free to register for Bid Locker.
- D. Proposers with further questions concerning Bid Locker may review the Vendor’s Guide located at <https://www.clackamas.us/how-to-bid-on-county-projects> .

### **Contact Information**

Procurement Process and Technical Questions: Ryan Rice, [rrice@clackamas.us](mailto:rrice@clackamas.us)

The Board of County Commissioners reserves the right to reject any and all Proposals not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any and all Proposals upon the finding that it is in the public interest to do so and to waive any and all informalities in the public interest. In the award of the contract, the Board of County Commissioners will consider the element of time, will accept the Proposal or Proposals which in their estimation will best serve the interests of Clackamas County and will reserve the right to award the contract to the contractor whose Proposal shall be best for the public good.

Clackamas County encourages proposals from Minority, Women, Veteran and Emerging Small Businesses.

## SECTION 2 INSTRUCTIONS TO PROPOSERS

Clackamas County (“County”) reserves the right to reject any and all Proposals received as a result of this RFP. County Local Contract Review Board Rules (“LCRB”) govern the procurement process for the County.

**2.1 Modification or Withdrawal of Proposal:** Any Proposal may be modified or withdrawn at any time prior to the Closing deadline, provided that a written request is received by the County Procurement Division Director, prior to the Closing. The withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new Proposal.

**2.2 Requests for Clarification and Requests for Change:** Proposers may submit questions regarding the specifications of the RFP. Questions must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, at the Procurement Division address as listed in Section 1 of this RFP. Requests for changes must include the reason for the change and any proposed changes to the requirements. The purpose of this requirement is to permit County to correct, prior to the opening of Proposals, RFP terms or technical requirements that may be unlawful, improvident or which unjustifiably restrict competition. County will consider all requested changes and, if appropriate, amend the RFP. No oral or written instructions or information concerning this RFP from County managers, employees or agents to prospective Proposers shall bind County unless included in an Addendum to the RFP.

**2.3 Protests of the RFP/Specifications:** Protests must be in accordance with LCRB C-047-0730. Protests of Specifications must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, or within three (3) business days of issuance of any addendum, at the Procurement Division address listed in Section 1 of this RFP. Protests may not be faxed. Protests of the RFP specifications must include the reason for the protest and any proposed changes to the requirements.

**2.4 Addenda:** If any part of this RFP is changed, an addendum will be provided to Proposers that have provided an address to the Procurement Division for this procurement. It shall be Proposers responsibility to regularly check OregonBuys for any notices, published addenda, or response to clarifying questions.

**2.5 Submission of Proposals:** Proposals must be submitted in accordance with Section 5. All Proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this RFP. Proposals that include orders or qualifications may be rejected as irregular. All Proposals must include a signature that affirms the Proposer’s intent to be bound by the Proposal (may be on cover letter, on the Proposal, or the Proposal Certification Form) shall be signed. If a Proposal is submitted by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the Proposal is submitted by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The Proposals will be considered by the County to be submitted in confidence and are not subject to public disclosure until the notice of intent to award has been issued.

No late Proposals will be accepted. Proposals submitted after the Closing will be considered late and will be returned unopened. Proposals may not be submitted by telephone or fax.

**2.6 Post-Selection Review and Protest of Award:** County will name the apparent successful Proposer in a Notice of Intent to Award published on OregonBuys. Identification of the apparent successful Proposer is procedural only and creates no right of the named Proposer to award of the contract. Competing Proposers shall be given seven (7) calendar days from the date on the Notice of Intent to Award to review the file at the Procurement Division office and file a written protest of award, pursuant to LCRB C-047-0740. Any award protest must be in writing and must be delivered by email, hand-delivery or mail to the address for the Procurement Division as listed in Section 1 of this RFP.

Only actual Proposers may protest if they believe they have been adversely affected because the Proposer would be eligible to be awarded the contract in the event the protest is successful. The basis of the written protest must be in accordance with ORS 279B.410 and shall specify the grounds upon which the protest is based. In order to be an adversely affected Proposer with a right to submit a written protest, a Proposer must be next in line for

award, i.e. the protester must claim that all higher rated Proposers are ineligible for award because they are non-responsive or non-responsible.

County will consider any protests received and:

- a. reject all protests and proceed with final evaluation of, and any allowed contract language negotiation with, the apparent successful Proposer and, pending the satisfactory outcome of this final evaluation and negotiation, enter into a contract with the named Proposer; OR
- b. sustain a meritorious protest(s) and reject the apparent successful Proposer as nonresponsive, if such Proposer is unable to demonstrate that its Proposal complied with all material requirements of the solicitation and Oregon public procurement law; thereafter, County may name a new apparent successful Proposer; OR
- c. reject all Proposals and cancel the procurement.

**2.7 Acceptance of Contractual Requirements:** Failure of the selected Proposer to execute a contract and deliver required insurance certificates within ten (10) calendar days after notification of an award may result in cancellation of the award. This time period may be extended at the option of County.

**2.8 Public Records:** Proposals are deemed confidential until the “Notice of Intent to Award” letter is issued. This RFP and one copy of each original Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, will be kept and made a part of a file or record which will be open to public inspection. If a Proposal contains any information that is considered a **TRADE SECRET** under ORS 192.345(2), **SUCH INFORMATION MUST BE LISTED ON A SEPARATE SHEET CAPABLE OF SEPARATION FROM THE REMAINING PROPOSAL AND MUST BE CLEARLY MARKED WITH THE FOLLOWING LEGEND:**

**“This information constitutes a trade secret under ORS 192.345(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”**

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” (ORS 192.345). Therefore, non-disclosure of documents, or any portion of a document submitted as part of a Proposal, may depend upon official or judicial determinations made pursuant to the Public Records Law.

**2.9 Investigation of References:** County reserves the right to investigate all references in addition to those supplied references and investigate past performance of any Proposer with respect to its successful performance of similar services, its compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, its lawful payment of subcontractors and workers, and any other factor relevant to this RFP. County may postpone the award or the execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation.

**2.10 RFP Proposal Preparation Costs and Other Costs:** Proposer costs of developing the Proposal, cost of attendance at an interview (if requested by County), or any other costs are entirely the responsibility of the Proposer, and will not be reimbursed in any manner by County.

**2.11 Clarification and Clarity:** County reserves the right to seek clarification of each Proposal, or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted initially in the most complete, clear, and favorable manner possible.

**2.12 Right to Reject Proposals:** County reserves the right to reject any or all Proposals or to withdraw any item from the award, if such rejection or withdrawal would be in the public interest, as determined by County.

**2.13 Cancellation:** County reserves the right to cancel or postpone this RFP at any time or to award no contract.

**2.14 Proposal Terms:** All Proposals, including any price quotations, will be valid and firm through a period of one hundred and eighty (180) calendar days following the Closing date. County may require an



extension of this firm offer period. Proposers will be required to agree to the longer time frame in order to be further considered in the procurement process.

**2.15 Oral Presentations:** At County's sole option, Proposers may be required to give an oral presentation of their Proposals to County, a process which would provide an opportunity for the Proposer to clarify or elaborate on the Proposal but will in no material way change Proposer's original Proposal. If the evaluating committee requests presentations, the Procurement Division will schedule the time and location for said presentation. Any costs of participating in such presentations will be borne solely by Proposer and will not be reimbursed by County. **Note:** Oral presentations are at the discretion of the evaluating committee and may not be conducted; therefore, **written Proposals should be complete.**

**2.16 Usage:** It is the intention of County to utilize the services of the successful Proposer(s) to provide services as outlined in the below Scope of Work.

**2.17 Review for Responsiveness:** Upon receipt of all Proposals, the Procurement Division or designee will determine the responsiveness of all Proposals before submitting them to the evaluation committee. If a Proposal is incomplete or non-responsive in significant part or in whole, it will be rejected and will not be submitted to the evaluation committee. County reserves the right to determine if an inadvertent error is solely clerical or is a minor informality which may be waived, and then to determine if an error is grounds for disqualifying a Proposal. The Proposer's contact person identified on the Proposal will be notified, identifying the reason(s) the Proposal is non-responsive. One copy of the Proposal will be archived and all others discarded.

**2.18 RFP Incorporated into Contract:** This RFP will become part of the Contract between County and the selected contractor(s). The contractor(s) will be bound to perform according to the terms of this RFP, their Proposal(s), and the terms of the Sample Contract.

**2.19 Communication Blackout Period:** Except as called for in this RFP, Proposers may not communicate with members of the Evaluation Committee or other County employees or representatives about the RFP during the procurement process until the apparent successful Proposer is selected, and all protests, if any, have been resolved. Communication in violation of this restriction may result in rejection of a Proposer.

**2.20 Prohibition on Commissions and Subcontractors:** County will contract directly with persons/entities capable of performing the requirements of this RFP. Contractors must be represented directly. Participation by brokers or commissioned agents will not be allowed during the Proposal process. Contractor shall not use subcontractors to perform the Work unless specifically pre-authorized in writing to do so by the County. Contractor represents that any employees assigned to perform the Work, and any authorized subcontractors performing the Work, are fully qualified to perform the tasks assigned to them, and shall perform the Work in a competent and professional manner. Contractor shall not be permitted to add on any fee or charge for subcontractor Work. Contractor shall provide, if requested, any documents relating to subcontractor's qualifications to perform required Work.

**2.21 Ownership of Proposals:** All Proposals in response to this RFP are the sole property of County, and subject to the provisions of ORS 192.410-192.505 (Public Records Act).

**2.22 Clerical Errors in Awards:** County reserves the right to correct inaccurate awards resulting from its clerical errors.

**2.23 Rejection of Qualified Proposals:** Proposals may be rejected in whole or in part if they attempt to limit or modify any of the terms, conditions, or specifications of the RFP or the Sample Contract.

**2.24 Collusion:** By responding, the Proposer states that the Proposal is not made in connection with any competing Proposer submitting a separate response to the RFP, and is in all aspects fair and without collusion or fraud. Proposer also certifies that no officer, agent, elected official, or employee of County has a pecuniary interest in this Proposal.

**2.25 Evaluation Committee:** Proposals will be evaluated by a committee consisting of representatives from County and potentially external representatives. County reserves the right to modify the Evaluation Committee make-up in its sole discretion.

**2.26 Commencement of Work:** The contractor shall commence no work until all insurance requirements have been met, the Protest of Awards deadline has been passed, any protest have been decided, a contract has been fully executed, and a Notice to Proceed has been issued by County.

**2.27 Best and Final Offer:** County may request best and final offers from those Proposers determined by County to be reasonably viable for contract award. However, County reserves the right to award a contract on the basis of initial Proposal received. Therefore, each Proposal should contain the Proposer's best terms from a price and technical standpoint. Following evaluation of the best and final offers, County may select for final contract negotiations/execution the offers that are most advantageous to County, considering cost and the evaluation criteria in this RFP.

**2.28 Nondiscrimination:** The successful Proposer agrees that, in performing the work called for by this RFP and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

**2.29 Intergovernmental Cooperative Procurement Statement:** Pursuant to ORS 279A and LCRB, other public agencies shall have the ability to purchase the awarded goods and services from the awarded contractor(s) under terms and conditions of the resultant contract. Any such purchases shall be between the contractor and the participating public agency and shall not impact the contractor's obligation to the County. Any estimated purchase volumes listed herein do not include other public agencies and County makes no guarantee as to their participation. Any Proposer, by written notification included with their Proposal, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies. County grants to any and all public serving governmental agencies, authorization to purchase equivalent services or products described herein at the same submitted unit bid price, but only with the consent of the contractor awarded the contract by the County.

## **SECTION 3 SCOPE OF WORK**

### **3.1. BACKGROUND**

The purpose of this RFP is to retain professional services to work under the direction of the Human Resources Director or Deputy Director to serve as the County's Chief Spokesperson/Negotiator for Clackamas County Peace Officers Association ("CCPOA") and the Federation of Parole and Probation Officers ("FOPPO") collective bargaining. The Chief Spokesperson/Negotiator will also investigate grievances and draft appropriate responses for the HR Director or Deputy Director's review, and review new created and/or newly revised County policies to determine impact on existing CCPOA and FOPPO collective bargaining agreements.

The intent of this RFP is to select a firm to represent the County in CCPOA and FOPPO negotiations over the span of two (2) to three (3) bargaining cycles.

The County is currently entering into negotiations with the CCPOA for the contract expiring on June 30, 2023, and the County has historically contracted out for negotiations with CCPOA on a contract-by-contract basis. The County just concluded negotiations with FOPPO, with the Chief Spokesperson/Negotiator role historically handled by County staff.

The current collective bargaining agreements may be found at:

<http://www.clackamas.us/des/contracts.html>.

### **3.3. SCOPE OF WORK**

The scope of work related to the Chief Spokesperson/Negotiator role is to work under the direction of the County's Human Resources Director or Deputy Director for the following purposes:

- 1) Serve as the Chief Spokesperson/Negotiator for negotiation of new Clackamas County Peace Officers Association ("CCPOA") and the Federation of Parole and Probation Officers ("FOPPO") collective bargaining agreements, which includes:
  - Representing the County at the bargaining tables during negotiations;
  - Conferring with the County's management team to understand and negotiate issues on behalf of the County;
  - Developing the County's initial management proposals with assistance from Human Resources and the management team;
  - Delivering the County's initial proposals, responding to union proposals, and developing counter proposals/package proposals in collaboration with the bargaining team during the course of bargaining sessions;
  - Providing regular updates to County Administration and the Board of County Commissioners as needed.
- 2) At the direction of the HR Director or Deputy Director, process, investigate and draft grievance responses within the contractual time limits at Step 3 for grievances filed on behalf of CCPOA and at Step 4 for grievances filed on behalf of FOPPO, for the HR Director or Deputy Director's review prior to submission to the union.
- 3) Review new or newly revised drafts of County policy to determine impacts, if any, on the CCPOA and FOPPO contracts. Communicate all identified impacts to the HR Director or Deputy Director.

Human Resources staff will retain responsibility for establishing the County's overall negotiations strategy, assisting in costing proposals, providing administrative support to the bargaining process, and assisting the Chief Spokesperson/Negotiator with communicating with the County's executive leadership and Board of County Commissioners on the status of negotiations.

### 3.3.2. Work Schedule:

Initial timelines for the first round of bargaining for each contract are outlined below:

CCPOA -

- February, 2023 - Bargaining Planning Discussions
- February, 2023 - Bargaining Begins
- June, 2023 - Current Contract Expires

FOPPO -

Negotiations for a successor contract will expire on June 30, 2025. Negotiations for the successor contract will begin on or after February, 2025.

### 3.3.3. Term of Contract:

The term of the contract shall be from the effective date through February, 2026, with the option for two (2) additional two (2) year renewals thereafter subject to the mutual agreement of the parties.

**3.3.4 Sample Contract:** Submission of a Proposal in response to this RFP indicates Proposer's willingness to enter into a contract containing substantially the same terms (including insurance requirements) of the sample contract identified below. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 2.2 or 2.3 of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP. This RFP and all supplemental information in response to this RFP will be a binding part of the final contract.

The applicable Sample Personal Services Contract for this RFP can be found at <https://www.clackamas.us/finance/terms.html>.

Personal Services Contract (unless checked, item does not apply)

The following paragraphs of the Professional Services Contract will be applicable:

- Article I, Paragraph 5 – Travel and Other Expense is Authorized
- Article II, Paragraph 28 – Confidentiality
- Article II, Paragraph 29 – Criminal Background Check Requirements
- Article II, Paragraph 30 – Key Persons
- Article II, Paragraph 31 – Cooperative Contracting
- Article II, Paragraph 32 – Federal Contracting Requirements
- Exhibit A – On-Call Provision

The following insurance requirements will be applicable:

- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

**SECTION 4  
EVALUATION PROCEDURE**

**4.1** An evaluation committee will review all Proposals that are initially deemed responsive and they shall rank the Proposals in accordance with the below criteria. The evaluation committee may recommend an award based solely on the written responses or may request Proposal interviews/presentations. Interviews/presentations, if deemed beneficial by the evaluation committee, will consist of the highest scoring Proposers. The invited Proposers will be notified of the time, place, and format of the interview/presentation. Based on the interview/presentation, the evaluation committee may revise their scoring.

Written Proposals must be complete and no additions, deletions, or substitutions will be permitted during the interview/presentation (if any). The evaluation committee will recommend award of a contract to the final County decision maker based on the highest scoring Proposal. The County decision maker reserves the right to accept the recommendation, award to a different Proposer, or reject all Proposals and cancel the RFP.

Proposers are not permitted to directly communicate with any member of the evaluation committee during the evaluation process. All communication will be facilitated through the Procurement representative.

**4.2 Evaluation Criteria**

<u>Category</u>	<u>Points available:</u>
Proposer’s General Background and Qualifications	0-30
Scope of Work	0-45
Fees	0-25
<b>Available points</b>	<b>0-100</b>

**4.3** Once a selection has been made, the County will enter into contract negotiations. During negotiation, the County may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the County is unable to come to terms with the highest scoring Proposer, discussions shall be terminated and negotiations will begin with the next highest scoring Proposer. If the resulting contract contemplates multiple phases and the County deems it is in its interest to not authorize any particular phase, it reserves the right to return to this solicitation and commence negotiations with the next highest ranked Proposer to complete the remaining phases.

## SECTION 5 PROPOSAL CONTENTS

### 5.1. Vendors must observe submission instructions and be advised as follows:

5.1.1. Proposals will only be accepted electronically thru Equity Hub's Bid Locker. Email submissions to Clackamas County email addresses will no longer be accepted.

5.1.2. Completed proposal documents must arrive electronically via Equity Hub's Bid Locker located at <https://bidlocker.us/a/clackamascounty/BidLocker>.

5.1.3. County reserves the right to solicit additional information or Proposal clarification from the vendors, or any one vendor, should the County deem such information necessary.

5.1.4. Proposal may not exceed a total of **10 pages** (single-sided), inclusive of all exhibits, attachments, title pages, pages separations, table of contents, or other information. The Proposal Certification Page will NOT count towards the final page count.

### **Provide the following information in the order in which it appears below:**

### 5.2. Proposer's General Background and Qualifications:

- Description of the firm.
- Credentials/experience of key individuals that would be assigned to this project.
- Description of providing similar services to public entities of similar size within the past five (5) years.
- Description of the firm's ability to meet the requirements in Section 3.
- Description of what distinguishes the firm from other firms performing a similar service.

### 5.3. Scope of Work

- Firm experience performing Chief Spokesperson/Negotiator services in public sector environments, specifically including strike-prohibited law enforcement-related bargaining units;
- Experience investigating grievances and drafting responses;
- Experience reviewing new or revised employer policies in relation to contract provisions;
- Experience of staff that will work on the project;
- Description of contractor's approach to ensure open lines of communication throughout the whole process with the County's Human Resources Director or Deputy Director;
- Not-to-exceed price to complete the project and a full rate sheet of all labor rates and other fees/costs associated with the work to be completed;
- Contractor References;
- Clackamas County Certifications Form; and
- Any additional information that Clackamas County should take into consideration for the project or qualifications.

### 5.4. Fees

Fees should be on a time and material with a not to exceed fee basis. Fees should be sufficiently descriptive to facilitate acceptance of a Proposal. List the not-to-exceed amount you propose for the service. Fees and fee schedules should outline all estimated expenses, hourly rates for all assigned individuals, anticipated travel, other reimbursable expenses.

**5.5. References**

Provide at least three (3) references from clients your firm has served similar to the County in the past three (3) years, including one client that has newly engaged the firm in the past thirty-six (36) months and one (1) long-term client. Provide the name, address, email, and phone number of the references. Please note the required three references may not be from County staff, but additional references may be supplied.

**5.6. Completed Proposal Certification (see the below form)**



**Exhibit B**  
**Vendor's Proposal**

# Ogletree Deakins

## Response to Request for Proposal #2023-01

### Clackamas County

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January 25, 2023

**Kyle T. Abraham**  
Kyle.Abraham@ogletree.com  
503-552-2177

We appreciate the opportunity to provide chief negotiator services to Clackamas County (the County) in connection with its collective bargaining negotiations with the Clackamas County Peace Officers Association (CCPOA) and the Federation of Parole and Probation Officers (FOPPO) and related matters. Our attorneys' substantial experience representing public entities in labor matters, including the County, makes us well situated to assist the County with these matters. In particular, we have handled collective bargaining matters for the County Sheriff's Office.

Below, we provide the information requested in the County's Request for Proposal and additional information that may be of interest to the County. In addition, our completed certification form is provided.

## 5.2. PROPOSER'S GENERAL BACKGROUND AND QUALIFICATIONS

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### FIRM OVERVIEW

Ogletree focuses on labor and employment law, giving us substantive knowledge of and experience with the issues important to the County. We have more than 950 attorneys across 55 offices, including an office in Portland. **Our Portland office received a Tier 1 ranking for Labor Law – Management in Portland from *U.S. News – Best Lawyers*® “Best Law Firms” in 2023.**

Our Traditional Labor Relations Practice Group is comprised of more than 150 attorneys who handle collective bargaining and union grievances on behalf of employers across the country. We also regularly represent clients in matters involving representation elections, unfair labor practice (ULP) charges, and other labor litigation.

### STAFFING

#### Relationship Manager and Chief Spokesperson/Negotiator



#### **Kyle T. Abraham – Shareholder, Portland**

As relationship manager, Kyle will serve as the County's point of contact for any concerns. He also will ensure that all work is assigned to an attorney with an appropriate experience level and rate. He will not bill for the time he spends in this capacity. Instead, we consider that time as part of our investment in client service and satisfaction.

Kyle represents employers in traditional labor and employment law matters. Kyle's labor practice includes negotiating collective bargaining agreements, advising on contract administration issues, and representing employers before labor arbitrators and the Oregon Employment Relations Board (ERB). In his employment law practice, Kyle is an experienced litigator who has successfully represented clients before U.S. circuit and district courts, Oregon and Washington state courts, the Equal Employment Opportunity Commission, the Oregon Bureau of Labor and Industries, and other state and federal agencies. Additionally, Kyle is a trained and experienced workplace investigator, and he regularly conducts investigations into allegations of employee misconduct, harassment, discrimination, retaliation, and other sensitive issues. Kyle has been recognized as an expert witness in the field of workplace investigations.

Kyle is heavily involved in Oregon's employment and labor law fields. He currently serves as the Past President of the Portland Human Resource Management Association and a Primary Chapter Editor for *The Developing Labor Law* publication. Additionally, he is a former Chair of the Oregon State Bar's Labor and Employment Section Executive Committee.

Prior to private practice, Kyle served on active duty in the Department of the Air Force as a Judge Advocate General and he represented the Air Force in labor and employment matters around the world. Kyle continues his military service as a Lieutenant Colonel in the Oregon Air National Guard.

## Team Member



### Derek Budzik – Of Counsel, Portland

Derek negotiates collective bargaining agreements and represents clients in arbitration proceedings and mediations, as well as before the ERB and the National Labor Relations Board. He has experience handling grievance and interest arbitrations and representing public sector labor organizations. Derek also has practical experience in house in a Fortune top 50 company negotiating collective bargaining agreements and handling grievances as well as other labor and human resources issues. Derek represented strike barred police officer,

sheriff's deputy, and parole and probation officer organizations as well as other public sector organizations. He advised these organizations on all labor issues and represented them before labor arbitrators and the ERB.

[Click the hyperlinks above for complete attorney biographies.](#)

## RELEVANT PUBLIC ENTITY EXPERIENCE

Our proposed team possesses extensive experience and familiarity with the following public sector clients in Oregon and Southwest Washington. Specifically, we have performed work on traditional labor matters, employment law matters, trainings, and/or investigations for the following Oregon public employers:

- State of Oregon, all branches
- Clackamas County
- City of Albany
- City of Corvallis
- City of Eugene
- City of Klamath Falls
- City of Salem
- City of Scappoose
- City of Toledo
- Benton County
- Columbia County
- Multnomah County
- Hood River County
- Josephine County
- Lane County
- Lincoln County
- Umatilla County
- Wasco County
- Clackamas County Vector Control
- Washington County
- Brookings-Harbor School District
- Lane Fire Authority
- Lower Umpqua Hospital District
- Northern Wasco County PUD
- Rockwood PUD
- Port of Portland
- Portland Public Schools
- Salem-Keizer School District
- TriMet

## ABILITY TO MEET RFP REQUIREMENTS

As provided in Section 3 of the RFP, the County is seeking legal counsel to provide the following services: (1) serve as chief spokesperson/negotiator for negotiations with CCPOA and RFOppo; (2) process, investigate, and draft grievance responses filed on behalf of CCPOA and FOPPO; and (3) analyze new County policies for impacts with CCPOA and FOPPO contracts. Our substantial collective bargaining and grievance experience, summarized below, makes us well situated to provide the County with these services.

### Collective Bargaining

Ogletree Deakins has represented clients with bargaining units of all sizes and with all major unions at the table and behind the scenes in countless collective bargaining negotiations. **Since January 2018, the firm has handled more than 1,000 collective bargaining matters throughout the United States. Our proposed team had served as chief negotiators for nearly 20 collective bargaining matters involving Deputy Sheriff's Associations and FOPPO units in Oregon since January 2018.**

Our attorneys are experienced counselors on all matters relating to collective bargaining, including:

- compensation rates and structures
- health insurance, retirement plans, and other benefits issues
- productivity, performance, attendance, discipline, and other accountability measures
- promotion, transfer, and layoff and recall rights, including ensuring management authority to fill positions based on skills and qualifications

### Experience with Unions Who Represent Clackamas County Employees

Ogletree Deakins attorneys regularly work with an array of unions, including the FOPPO, CCPOA, and American Federation of State, County and Municipal Employees (AFSCME). Our attorneys have dealt with FOPPO and AFSCME in Oregon, as well as nationally, on a range of labor matters, including those involving collective bargaining, ULP charges, and labor arbitrations.

### Grievance and Labor Arbitrations

Ogletree Deakins routinely handles labor arbitrations for clients with unionized workforces. **Since January 2018, our attorneys have handled nearly 2,200 labor arbitration matters. Our proposed team has handled more than fifteen labor arbitrations since January 2018.**

Because arbitrator selection is critical to a successful outcome, we emphasize knowledge management and maintain a detailed database of labor and employment arbitrators across the United States. Our arbitrator database now contains almost 4,500 Ogletree Deakins' reviews of more than 1,800 different arbitrators—information that proves extremely valuable to our clients.

## WHAT SETS OGLETREE APART

### (1) Experience Serving the County

We have substantial experience assisting public entities across Oregon with their labor matters, including the County. Proposed relationship manager and chief spokesperson/negotiator Kyle Abraham served as chief negotiator for the County Sheriff's Office. This experience provides us with a solid foundation upon which to expand our relationship with the County.

## **(2) Familiarity with the FOPPO, the CCPOA, and Law Enforcement Bargaining**

As explained above, our attorneys have experience working with FOPPO and CCPOA. Through this experience, we are familiar with the issues these unions exploit and their bargaining and organizing successes and failures. Our insights will be helpful when making strategic decisions during collective bargaining and grievance responses. Additionally, Kyle and Derek have extensive bargaining experience for other Sheriff's Offices and Parole and Probation Offices across Oregon, which allows our team to bring knowledge of bargaining best practices to the County's attention for implementation.

## **(3) Cost-Effective Services**

Kyle has substantial experience helping employers reach favorable resolutions in collective bargaining negotiations. He leverages his experience and knowledge to help his clients resolve their labor challenges in a fraction of the time it takes other lawyers. Working closely with the County's bargaining team and any other key stakeholders, Kyle will focus on reaching collective bargaining agreements favorable to the County at the earliest stage possible and in a cost-effective manner.

# **5.3 SCOPE OF WORK**

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## **RELEVANT EXPERIENCE OF TEAM MEMBERS**

### **Kyle Abraham**

Kyle has significant experience serving as chief negotiator in collective bargaining negotiations, many of which involved drafting initial proposals to unions, responding to union questions/concerns, and developing counterproposals to unions. In addition, Kyle frequently assists Oregon public sector employers like the County with their labor challenges by ensuring that their bargaining approach, policies, practices, and employee relations measures align with their goals and preferred approach to organized labor relations.

### **Derek Budzik**

Derek started his legal career representing public sector labor organizations, including strike-prohibited public safety employees. There, Derek gained substantial experience handling collective bargaining, grievance arbitrations, interest arbitrations, ULPs, and union organizing matters. Derek previously represented FOPPO and other deputy associations across Oregon. Derek's experience gives him insight into the inner workings of these labor organizations, the parole and probation system, and the issues that affect deputies and parole and probation officers.

## **COMMUNICATION**

At the start of this engagement, we will hold an onboarding meeting, at our expense, during which Kyle will meet with the County's bargaining team and any other key representatives of the County to gain insights into current business and operations issues and to gain an understanding of the County's goals for collective bargaining. Throughout the course of the engagement, Kyle will communicate regularly with the County's representatives to ensure that we are helping it meet its business, legal, and budgetary goals.



## COLLECTIVE BARGAINING APPROACH

Kyle takes a problem-focused rather than a position-focused approach to collective bargaining. He targets the narrow problems that are identified at the table and works with the union to collaboratively develop solutions in the form of a proposal. This cooperative approach helps Kyle's clients achieve optimal results in bargaining and maintain strong, healthy labor relations. If the parties are not able to reach an agreement, Kyle is skilled at setting up the client's position for a successful case before an interest arbitrator.

## 5.4 FEES

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Based on our experience in public sector collective bargaining, we will be able to provide the County with an accurate expected cost for contract negotiations. However, given the nature of bargaining and the potential positions taken by the union, we are unable to commit to a not-to-exceed amount. We take pride in providing value to our clients, and we invite the County to contact any of the public employers with which we have worked to confirm that our value added to the negotiations exceeded the fees we charged.

We are conscious of travel being a significant cost, and we frequently use technology to limit the cost of travel. For example, we regularly offer clients the option of having virtual meetings in order to eliminate travel cost. We welcome the opportunity to work openly, honestly, and creatively with the County to determine how best to keep costs down while protecting the County's interests in each case.

Because we are mindful of the importance of being good stewards of public resources, we are pleased to offer the following public sector rates that are discounted by 10% off our standard rates, and the discounted rates are reflected below:

<u>Team Members</u>	<u>Hourly Rate</u>
Kyle T. Abraham (Shareholder)	\$430
Derek Budzik (Of Counsel)	\$400

## 5.5 REFERENCES

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### Columbia County

Contact name: Carrie Garcia

Title: Human Resources Director

Phone: 503-397-7264

Email: [Carrie.Garcia@columbiacountyor.gov](mailto:Carrie.Garcia@columbiacountyor.gov)

Address: 230 Strand Street, Room 20, St. Helens, OR 97051

Project Description: Kyle represents Columbia County in its labor and employment work.

### Hood River County

Contact name: Cheryl Berger

Title: Human Resources Director

Phone: 541-387-6829

Email: [Cheryl.Berger@hoodrivercounty.gov](mailto:Cheryl.Berger@hoodrivercounty.gov)

Address: 601 State Street, Hood River, OR 97031

Project Description: Kyle represents Hood River County in its labor and employment work.



## **Wasco County**

Contact name: Nichole Biechler

Title: Human Resources Director

Phone: 541-506-2774

Email: NicholeB@co.wasco.or.us

Address: 511 Washington Street, Suite 302, The Dalles, OR 97058

Project Description: Kyle represents Wasco County in its labor and employment work.

# **ADDITIONAL INFORMATION**

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## **TRAINING**

Ogletree Deakins is experienced in addressing issues common to collective bargaining and other labor-related matters. We often provide training for employers designed to drive compliance, reduce risk, increase and implement the use of best practices, and improve employee morale.

### **Customized Labor Training**

We maintain updated labor training materials regarding managing in a union environment, improving the grievance process, and related topics. Those training materials include different delivery styles (lecture, interactive training, presentation/resolution of hypotheticals, and mock simulation exercises) and formats (direct training, web-based delivery, webcasts, and train-the-trainer). Clients may view those training materials and select the combination of components that best fits their needs and objectives.

### **Collective Bargaining Training**

Our firm designs training sessions specific to collective bargaining skills, which may be of particular use to the County. These sessions can be intensive, multi-day immersive workshops, such as the Collective Bargaining Strategies seminar we offer to our clients.

Our training provides attendees with the rare opportunity to practice bargaining skills away from an actual bargaining table. The training includes input from former union-side lawyers who understand and can explain union priorities and tactics during bargaining and provides attendees the opportunity to mock bargains from both the company's and the union's perspectives. Our in-depth training also allows clients to learn vital skills involving contract costing so that they can assess the economic impact of both sides' proposals. In addition, we provide training with respect to strike plans, which are increasingly important as strikes become more frequent, developing into a significant issue for employers. Finally, clients can learn tips on responding to media inquiries, handling disruptions during bargaining, planning for work stoppages, and dealing with "last, best, and final" offers.

## **KNOWLEDGE MANAGEMENT LEGAL RESOURCE CENTER**

Our Knowledge Management (KM) Legal Resource Center provides our attorneys with more than 1,000 best practice model documents, checklists, samples, and practice guides for litigation and counseling. The KM Legal Resource Center materials are prepared or approved by knowledgeable firm attorneys—at no expense to clients—and are routinely updated to incorporate changes in the law.

## PUBLICATIONS AND PODCASTS

- The firm's [blog](#) includes thousands of attorney-authored articles covering legal developments in more than 30 jurisdictions and practice areas. Ogletree Deakins published more than 500 blog posts in 2022.
- Our attorneys record [podcasts](#) regarding the trending legal topics of interest to employers.
- Our weekly *On Point*™ email offers subscribers a list of our recent content tailored to their interests.

## COMMITMENT TO DIVERSITY, EQUITY, AND INCLUSION

Ogletree Deakins has a long-standing commitment to diversity, equity, and inclusion (DEI). It is not only a moral imperative, it is one of our core values and is essential to the growth and success of our firm and the quality of service we provide to our clients. We know that DEI makes us stronger and more thoughtful and produces better results.

Ogletree achieved Mansfield Certification status in 2022, which requires that for leadership roles and other meaningful advancement opportunities within the Firm, at least 30 percent of attorneys we consider will be women lawyers; lawyers from underrepresented racial/ethnic groups; lawyers with disabilities; and/or LGBTQ+ lawyers.



## Awards and Recognition

Our DEI efforts have led to numerous accolades, including:

- Mansfield Certification: 2022
- HRC Perfect Score on Corporate Equality Index: 2017–2022
- Bloomberg Law Diversity, Equity, and Inclusion Framework List: 2021–2022
- "Best Law Firms for Women" by Seramount (formally Working Mother): 2016; 2018–2022
- WILEF Gold Standard Certified Firm: 2015–2022
- Leadership Council on Legal Diversity Compass Award: 2019–2021
- Minority Corporate Counsel Association (MCCA)'s Inaugural Diversity Scorecard 2021
- Diversity and Flexibility Alliance's Tipping the Scales Award: 2019–2021
- Diversity and Flexibility Alliance's 2021 Flex Success Award

## RECENT FIRM ACCOLADES

### 2023 U.S. News – Best Lawyers® “Best Law Firms”

- "Law Firm of the Year" for Litigation – Labor & Employment
- A "Law Firm of the Year" for 12 consecutive years
- "First-Tier" rankings in eight practice areas:
  - Employment Law – Management
  - Labor Law – Management
  - Litigation – Labor & Employment
  - Immigration Law
  - Employee Benefits (ERISA) Law
  - Litigation – ERISA
  - Litigation – Construction
  - Construction Law



## Chambers USA 2022

- A “[f]ormidable labor and employment practice with numerous offices across the USA, providing advice on the whole range of relevant matters such as internal workplace investigations, litigation and regulatory compliance.”

## BTI Litigation Outlook 2022

- "Powerhouse" for Class Action and Complex Employment Litigation categories and "Leader" for Complex Commercial Litigation category
  - Tenth consecutive year that the firm has earned top distinctions

## BTI Client Service A-Team 2022: Survey of Law Firm Client Service Performance

- Ranked number four for client service
  - Appeared on BTI Consulting Group's list eight times



## Thomson Reuters U.S. Law Firm Brand Index 2022

- Ranked number 12 for brand strength
  - The ranking is a reflection of which firms are upper-most in clients' minds, whom they are most attracted to, and whom they are most likely to give their work

**Thomson Reuters'**  
**US LAW FIRM**  
**BRAND INDEX 2022**

## Individual Attorney Accolades

- 270+ of our attorneys are listed in *The Best Lawyers in America 2023*
  - Proposed team member Kyle Abraham is recognized in Oregon for (i) Labor Law – Management, (ii) Labor Law – Union, (iii) Employment Law – Management, and (iv) Litigation – Labor and Employment
- 75+ of our attorneys are ranked in *Chambers USA 2022*
  - Kyle is ranked in *Chambers USA* for Labor and Employment in Oregon
- 60 of our attorneys are Fellows in the College of Labor and Employment Lawyers
- 25+ of our attorneys are named 2022 Thomson Reuters Stand-out Lawyers

## CONCLUSION

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Thank you for the opportunity to respond to the County's RFP for assistance with its collective bargaining negotiations with CCPOA and FOPPO and related matters. Our attorneys' substantial and direct experience representing public entities in labor matters—which includes collective bargaining matters for the County Sheriff's Office—makes us well situated to assist the County with these matters. Please do not hesitate to contact us if you would like to discuss our proposal or have any questions.

**PROPOSAL CERTIFICATION**  
**RFP #2023-01**

Submitted by: Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (South Carolina)  
**(Must be entity's full legal name, and State of Formation)**

Each Proposer must read, complete and submit a copy of this Proposal Certification with their Proposal. Failure to do so may result in rejection of the Proposal. By signature on this Proposal Certification, the undersigned certifies that they are authorized to act on behalf of the Proposer and that under penalty of perjury, the undersigned will comply with the following:


**SECTION I. OREGON TAX LAWS:** As required in ORS 279B.110(2)(e), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Proposer is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means the tax laws of the state or a political subdivision of the state, including ORS 305.620 and ORS chapters 316, 317 and 318. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Proposer to 24% backup withholding.

**SECTION II. NON-DISCRIMINATION:** That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

**SECTION III. CONFLICT OF INTEREST:** The undersigned hereby certifies that no elected official, officer, agent or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFP, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its elected officials, officers, agents, or employees had induced Proposer to submit this Proposal. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a proposal for the same material, and is in all respects fair and without collusion or fraud.

**SECTION IV. COMPLIANCE WITH SOLICITATION:** The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFP (including any attachments); and
2. Are an authorized representative of the Proposer, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Proposal or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFP and Proposal; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFP.

Name: Kyle Abraham Date: 1/24/2023  
Signature:  Title: Shareholder  
Email: kyle.abraham@ogletree.com Telephone: 503-552-2177  
Oregon Business Registry Number: 697948-90 OR CCB # (if applicable): \_\_\_\_\_

Business Designation (check one):

Corporation  Partnership  Sole Proprietorship  Non-Profit  Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: \_\_\_\_\_