

# Council Business Meeting

July 21, 2020

<b>Agenda Item</b>	Approval of Multiple Public Contracts for Internet Bandwidth	
<b>From</b>	Adam Hanks	Interim City Administrator
<b>Contact</b>	<a href="mailto:adam.hanks@ashland.or.us">adam.hanks@ashland.or.us</a> ; (541) 552-2046	

## **SUMMARY**

Council approval is being requested to authorize the City Administrator to execute multiple public contracts for internet bandwidth. The services include providing internet bandwidth, monitoring the City's internet bandwidth needs, and managing the network routing of the internet bandwidth. Multiple contracts are required to ensure carrier and path diversity.

## **POLICIES, PLANS & GOALS SUPPORTED**

This contract award to renew and improve internet services will support the City's goals of achieving carrier and physical path diversity and operational efficiencies. It will result in more robust and resilient internet service to all Ashland Fiber Network (AFN) customers: citizens, businesses, and all departments of the City of Ashland. During the current health emergency – when residential connections proxy as businesses and classrooms, as well as a conduit for recreation, family business, and health care – the capacity and dependability of the AFN network is more vital than ever.

### 2015-2017 Council Goals Supported

17 Market and further develop the Ashland Fiber Network

17.1 Complete and implement the AFN business Plan

16.1 Position Ashland as a location where high-tech businesses want to grow

## **PREVIOUS COUNCIL ACTION**

The multiple contract awards resulting from the previous 2018 formal Competitive Sealed Proposal (Request for Proposal) were approved by the City Council on [October 16, 2018](#).

## **BACKGROUND AND ADDITIONAL INFORMATION**

The sourcing method used to obtain proposals for internet bandwidth is a formal Competitive Sealed Proposal (Request for Proposal). The City received four proposals in response to this RFP. The proposals were evaluated in accordance with the evaluation process and criteria set forth in the RFP. A three-person evaluation committee evaluated the proposals and the evaluation summary is attached for your review.

AFN has had a presence in Portland since January 2018. Portland is an important connection point because major carriers have connection points there. While the carriers may travel through Southern Oregon, none of them offer a connection point.

AFN currently has a single 10 Gbps link to Portland. There have been issues with that connection due to fiber cuts between Ashland and Portland. During the last bandwidth RFP in 2017, we received bids for redundant and protected transports to Portland. Unfortunately, those options were then out of our price range.

Prices have decreased to the level where we can now justify a second 10 Gbps link to Portland. This second 10 Gbps link will bring much needed reliability to AFN's internet connection. With increased reliability, we will join NWAX which is a not for profit 501(c)(6) peering exchange. This will allow AFN to peer directly

with Netflix, Yahoo, Google, Amazon, Twitch, and more. Around 40 percent of AFN’s traffic will traverse this low-cost connection.

Even though the existing contracts for internet bandwidth could have been extended annually for three more years for a maximum term of five years, AFN staff chose to competitively bid the services now to seek additional cost savings and improve reliability.

**FISCAL IMPACTS**

	Annual Cost	Change from Current (Annual)
FY2021	\$48,720	\$4,472
FY2022	\$146,160	\$13,416
FY2023	\$146,160	\$13,416

At a time of record high customer counts and bandwidth usage, this contract would take advantage of provider rate changes favorable to AFN, allowing the City to improve internet reliability. This contract will improve AFN’s Internet bandwidth performance and resiliency by adding a much needed second, fully redundant 10 Gbps connection via a separate transport path between Ashland and Portland. It also includes transit connections in both Ashland and Portland while remaining substantially below the previous biennium’s budgeted \$170,000 per year. The existing contract ends on October 31.

This proposal includes a cost of \$1,118 per month that could be offset with other reductions, if not fully absorbed by the addition of new customers.

The proposed solution will benefit AFN’s subscriber base (City of Ashland, City of Medford, Ashland School District, business, residences, etc.) with increased reliability and provide safeguards in case of cataclysmic events.

**STAFF RECOMMENDATION**

Staff recommends multiple public contracts be awarded to the highest ranked proposers that will ensure carrier and path diversity as follows:

<b><u>Name of Proposer</u></b>	<b><u>Internet Bandwidth</u></b>
Hunter Communications	IP Transit in Ashland
LS Networks	IP Transit in Portland
LS Networks	Transport Ashland to Portland
LS Networks	Additional option: “2 <sup>nd</sup> Wave” Unprotected

**ACTIONS, OPTIONS & POTENTIAL MOTIONS**

I move to authorize the City Administrator to execute contracts for internet bandwidth service consistent with the terms proposed in the staff recommendations provided in the Council Communication and utilizing the draft agreement attached to the Council Communication as a template.

**ATTACHMENTS**

Attachment 1: Evaluation Summary

Attachment 2: Draft Internet Bandwidth Service Agreement

**2020 RFP - INTERNET BANDWIDTH  
EVALUATION SUMMARY**

Evaluation Criteria (Technical Proposal)	POINTS	Cogent			Hunter Communications			LS Networks			Nitel		
		Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 1	Evaluator 2	Evaluator 3
Letter of Introduction, Table of Contents, & Proposal Submission Form	5	4	5	4	2	5	4	5	5	5	1	2	4
Qualifications and Experience	15	15	15	15	13	8	13	13	10	13	14	9	15
Transports	20	0	0	0	0	0	0	20	20	20	0	0	0
IP Transits	20	20	20	20	20	20	20	20	20	20	20	20	20
Activation Plan	10	10	10	10	10	10	10	9	10	8	8	8	7
Outage Notification and Resolution Protocol	5	5	5	5	5	4	4	4	5	4	3	5	3
New Technologies and/or Additional Services	10	8	5	6	9	5	9	9	2	9	8	1	9
References	10	8	5	6	9	8	9	10	10	10	8	2	8
Contract Terms and Conditions	5	4	3	4	5	5	5	4	5	4	4	1	4
Subtotal	100	74	68	70	73	65	74	94	87	93	66	48	70
Cost Proposal	25	7.3	7.3	7.3	14.6	14.6	14.6	24.9	24.9	24.9	18.9	18.9	18.9
Total	125	81	75.3	77.3	87.6	79.6	88.6	118.9	111.9	117.9	84.9	66.9	88.9
Grand Total		233.9			255.8			348.7			240.7		

Cost Proposal Scores	IP Transit in Ashland (8.3 Points)	IP Transit in Portland (8.3 Points)	Transport Ashland to Portland (8.3 Points)	TOTAL POINTS
Cogent	0	7.3	0	7.3
Hunter Communications	7.3	0	7.3	14.6
LS Networks	8.3	8.3	8.3	24.9
Nitel	6.3	6.3	6.3	18.9

City's intent is to award public contracts as follows:

    IP Transit in Ashland:  
    IP Transit in Portland:  
    Transport Ashland to Portland:  
    Additional option: "2nd Wave" Unprotected:

Proposer

Hunter Communications  
LS Networks  
LS Networks  
LS Networks

# **City of Ashland**

## **Internet Bandwidth Service Agreement**

This Internet Service Agreement (hereinafter referred to as the “Agreement”) is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter referred to as the “City”), and \_\_\_\_\_, a (domestic/foreign corporation/company) (hereinafter referred to as the “Provider”) for internet bandwidth services.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the City and Provider hereby agree as follows:

### **1. SERVICES.** Provider shall provide to the City:

**1.1. Data Services.** Provider shall supply access to Provider’s telecommunications system as necessary for the City to receive internet bandwidth data services at one of the points of delivery set forth below:

- Ashland Fiber Network located at 90 North Mountain Avenue, Ashland, Oregon 97520
- Pittock Internet Exchange located at 921 SW Washington, Portland, Oregon 97205

The point of delivery is the location where the network and City’s system are interconnected. The data services provided to the City shall meet all the service standards set forth in Section 4 of this Agreement.

**1.2. Installation Services.** Provider shall supply all installation services necessary to supply the City with data services. Installation services shall include all engineering, site surveys, system configuration, and any other services necessary for the City to access data services. Installation services shall be coordinated with the City. These installation services shall be provided up to the date that the service testing is completed based on Provider’s customary testing procedures and data services are available to the City (hereinafter the “Service Acceptance Date”). In addition, Provider will supply the equipment (collectively referred to as “Provider facilities”) necessary to connect City’s facilities to the Provider’s network.

### **2. TERM; FINANCIAL REVIEW.**

**2.1.** This Agreement shall be effective upon the date of execution by the City (hereinafter the “Effective Date”) and shall continue in full force and effect for a period of two (2) years (hereinafter the “Initial Term”), unless sooner terminated as provided herein. This Agreement may be renewed for a maximum of three (3) additional one (1) year periods.

**2.2.** This Agreement shall be subject to quarterly financial reviews, the first of which shall occur approximately three (3) months from the Effective Date. A financial review will be completed prior to any renewal or extension of the Initial Term of this Agreement. As part of any quarterly financial

review, Provider will provide to the City all applicable information necessary for the review including, but not limited to:

- The City's bandwidth consumption;
- Service rates;
- Provider bandwidth costs; and
- Provider support costs.

The City may renegotiate any pricing and fees prior to any renewal or extension of this Agreement.

**3. FEES AND CHARGES.** The City agrees to pay for Provider's services in accordance with the Fee Schedule attached hereto as "Exhibit A" and incorporated herein by this reference.

**3.1. Data Services Rates.** The City shall pay the rates specified in "Exhibit A." If data services do not begin on the first day of a billing cycle, then payments for the first month shall be prorated on a daily basis. All accounts will be invoiced on the first day of each month, and all sums shall be paid within thirty (30) days after the date of the monthly billing for data services (the "Due Date"). Provider shall include detailed usage and pricing on each invoice submitted to the City for payment.

**3.2. Installation Services Charge.** The City shall pay the installation charges specified in "Exhibit A" for the installation services provided by Provider and approved by the City. Such charges shall be due and payable upon onsite installation of the fiber terminating hardware. Installation shall establish the due date of the installation charges and the service acceptance date. Upon service acceptance by the City, the prorated data service charges set forth in Subsection 3.1 shall apply. The City maintains the right to refuse installation and service if, in the City's discretion, the service will not meet all standards of section 4.

**3.3. Uninterruptible Power Supply.** The City may provide a form of uninterruptible power source for the fiber termination hardware and any of Provider's facilities or equipment at the City's 90 North Mountain Avenue, Ashland location. If the City does not provide an uninterruptible power source, Provider will provide one in accordance with "Exhibit A."

**3.4. Late Payments.** Payments received after the Due Date may be subject to a charge of one percent (1%) per month on the unpaid balance at the discretion of Provider.

**3.5. Taxes, Fees, Government Charges.** The City agrees to pay any applicable taxes, franchise fees or other governmental charges imposed upon Provider by a governing body with jurisdictional authority over the data services provided to the City pursuant to this Agreement.

**3.6. Cost Savings.** To encourage Provider to innovate and take advantage of new technologies that may provide cost savings to the City, this Agreement and exhibits hereto may be changed by an amendment at any time in order to provide for an allocation of the cost savings between City and Provider for their mutual benefit.

#### **4. SERVICE REQUIREMENTS AND PERFORMANCE STANDARDS.**

**4.1. Minimum Requirements.** Provider shall provide data services and equipment to the City that meet the following minimum requirements:

- (a) Minimum single link speed of ten (10) gigabits per second;
- (b) Packet delay not to exceed twelve (12) milliseconds at ten (10) gigabits per second network loading per link to Provider's upstream network interfaces; and
- (c) BGP4 routing management of Ashland Fiber Network's Autonomous System Number.

**4.2. Performance Standards.** Provider shall provide data services that meet the following standards:

- (a) Internet bandwidth must be fully operational 99.9% of the time it is scheduled to be so operational;
- (b) Internet bandwidth must maintain packet delay not to exceed twelve (12) milliseconds at ten (10) gigabits per second;
- (c) Provider shall have a specific process in place specifically for City use to process/execute work orders;
- (d) Provider shall have expert staff available and accessible via the designated toll-free numbers 99% of the time; and
- (e) Provider shall follow the Outage Notification and Resolution Protocol set forth in Section 6 of this Agreement.

#### **5. PROVIDER FACILITIES AND EQUIPMENT.**

**5.1. Installation and Maintenance.** Provider shall, at its sole expense, undertake all necessary preparations to install and maintain its equipment upon the City's premises or in any other locations that are required for Provider to deliver data services, except for any costs agreed upon by City pursuant to Subsection 7.1. of this Agreement. Any Provider facilities and/or equipment installed on City's premises shall be, and shall remain, the property of Provider and may be repaired or replaced, in coordination with the City, at any time and removed at the termination of this Agreement. The City will not charge rent to Provider for placing or maintaining mutually agreed facilities and/or equipment upon City's premises for the exclusive purpose of providing Data Service to City pursuant to this Agreement. Provider shall be entitled, at any time coordinated with the City, to affix to Provider's facilities or equipment a label indicating the interest of Provider.

**5.2. Removal.** The City will use reasonable efforts to ensure that Provider's facilities and/or equipment are not removed or caused to be removed from any City premises by any person or entity, other than Provider and its employees and agents.

**5.3. Proper Environment.** The City shall use reasonable efforts to keep the location of Provider's facilities and/or equipment in the proper environment as specified by Provider in writing and agreed to by the City.

**5.4. Damage.** The City agrees to exercise due care and caution to protect Provider's facilities and/or equipment located at any City-owned or leased premises from inclement weather, vandalism, and other potential problems. The City shall be liable for any loss or damage to Provider's facilities and/or equipment located at any City-owned or leased premises arising from the City's sole negligence, intentional act, or any unauthorized maintenance. In the event of any loss or damage to Provider's facilities and/or equipment for which the City is liable, the City shall reimburse Provider for the lesser of: a. the reasonable cost of repair; or b. the actual cost of replacement.

## **6. OUTAGE NOTIFICATION AND RESOLUTION PROTOCOL.**

**6.1. Degradation of Service Requirements and Performance Standards.** Provider shall notify City within three (3) hours of when Provider knows or should have known about any degradation of its data services. Degradation occurs when Provider is providing data services, but those services fail to meet the service requirements and performance standards set forth in Section 4 of this Agreement. Failure to resolve the degradation in accordance within the time periods set forth in subsection 9.3 of this Agreement shall result in liquidated damages, and such continued failure may result in termination pursuant to Section 9.

**6.2. Outage.** Provider shall notify City within one (1) hour if Provider is unable to provide data services due to an outage that is not caused by an event of force majeure as defined in Subsection 11.11 of this Agreement. Provider shall restore data services within eight (8) hours. Failure to restore data services in accordance with this Section 6 and Subsection 9.3 shall result in liquidated damages and may result in termination of this Agreement.

**6.3. Emergency.** Provider shall notify the City immediately if Provider is unable to provide data services due to an event of force majeure as defined in Subsection 11.11 of this Agreement.

## **7. RIGHTS AND OBLIGATIONS OF CITY.**

**7.1. Installation.** The City shall provide the necessary consent for the installation and use of its premises by Provider, including any consent necessary for any minor alterations to City buildings. The City shall provide a suitable and safe working environment for Provider's personnel in City facilities and on City premises, including an environment safe from environmental hazards. The City agrees to make other accommodations that are mutually agreed upon in writing.

**7.2. Premises Access.** The City shall provide Provider and its employees and agents with access to the City's premises for the implementation of all services to be provided pursuant to this Agreement. Provider shall not be responsible for any failure to provide the services pursuant to this Agreement to the extent that Provider, in good faith, attempts to access City facilities and/or equipment and the City fails to provide access to such City facilities and/or equipment.

**7.2.1.** During implementation of the services to be provided pursuant to this Agreement, Provider agrees to perform the work required to install or repair Provider's facilities and/or equipment during its normal working hours. Provider may, upon reasonable advance notice, request access to City premises at other times. At City's request, Provider will carry out work to install Provider's facilities and/or equipment outside of Provider's regular working hours, in which event City agrees to pay the difference between the overtime rate and the standard rate of pay and any other appropriate charges as agreed to in writing between the parties.

**7.2.2.** Any out-of-pocket costs, reasonably incurred by Provider because of the denial of access by City to any of City's locations, shall be paid by City. Provider shall advise City of any such costs on a case-by-case basis.

### **7.3. City's Connection to Data Services.**

**7.3.1.** Upon written notice from Provider that any equipment or software not provided by Provider is causing or is likely to cause a hazard, interference, or service obstruction to data services, Provider and the City shall coordinate the elimination of the hazard, interference, or service obstruction.

**7.3.2.** The City will only connect to the network to receive data services using industry standard equipment that has compatible standards with the service specifications set forth in applicable technical publications. Provider may suspend the provision of data services to any connection so affected if service to the City would directly and solely cause the cessation of Provider's network to function. Following remedial action by City satisfactory to Provider, Provider will reinstate data service provided through that connection as soon as possible.

**7.3.3.** The City will cooperate with Provider in setting the initial configuration for its equipment interface with the network.

**7.3.4.** Provider may from time to time issue written technical instructions on the use of the network to ensure the proper functioning of all services or the protection of the network from damage or deterioration. The City agrees to observe any such technical instructions issued by Provider.

**7.4. System Integrity.** The City agrees to cure any violation (other than failure to pay) of its obligations set forth in this Agreement within thirty (30) days after receiving written notice of such violation from Provider.

**7.5. Provider Equipment Movement.** The City shall obtain written authorization from Provider prior to moving any of Provider's facilities or equipment. The costs of any disruption in services caused solely the moving of any Provider-owned facilities or equipment by the City without Provider's written authorization, will be the sole responsibility of the City. No deductions to billing will be made for any City-caused disruption to services.

**8. ACCEPTABLE USE POLICY FOR IP PRODUCTS AND SERVICES.** Provider's written Acceptable Use Policy, if any, shall be attached hereto as "Exhibit B" and fully incorporated herein by this reference.

**9. TERMINATION.**

**9.1 For Cause.** Either party may terminate this Agreement for cause, provided that written notice is given to the other party specifying the cause for termination and requesting correction within ten (10) calendar days for failure to pay a sum due, or within twenty-one (21) calendar days for any other cause, and such cause is not corrected within the applicable period. Cause includes, but is not limited to, any material breach of any term of this Agreement, including the failure to pay any amount when due and payable, the filing of a petition in bankruptcy by or against either party, or the failure of Provider to provide data services as required for the City's operations.

**9.2 For Convenience.** This Agreement may be terminated by either party at any time upon not less than sixty (60) days' prior written notice to the other.

**10. OPERATION STANDARDS/LIQUIDATED DAMAGES.**

**10.1.** Specific functions and performance of Provider's data services as set forth in the Request for Proposals (hereinafter "RFP") attached hereto as "Exhibit C" and incorporated herein by this reference must operate at or above the levels specified in the RFP. All functions, whether or not described in the RFP, must operate and perform at or above levels meeting the requirements of this Agreement. In the event of unsatisfactory performance by Provider in providing operations and support of Internet bandwidth and data services through no fault of the City, Provider shall be responsible for the direct payment to the City of liquidated damages. As to noncompliance with the standards set forth below, such damages shall accrue from the date(s) that unsatisfactory performance has occurred and will continue through the resolution of such deficiency provided the City gives written notice of such deficiency as soon as reasonably practicable, but no later than ten (10) business days after the actual occurrence of noncompliance. Actual occurrence of noncompliance will be defined by the City, but not sooner than the agreed delivery date of data services. If the City gives written notice more than ten (10) business days after the actual occurrence of noncompliance, then such damages shall accrue from the date of Provider's receipt of written notice from the City of noncompliance, unless the damages are waived in writing by the City. Required performance levels are as follows:

- a. Bandwidth Availability. Internet bandwidth must be fully operational 99.9% of the time it is scheduled to be so. Outage periods for maintenance will not be counted against this performance level if agreed to, in advance, by both parties. If the bandwidth is nonfunctional or inaccessible more than 0.5% in any 90-day period, the Provider shall be liable to the City for \$1500.00 for each quarter of such occurrence. For each full or partial one-tenth of a percentage point over .5% that the solution is nonfunctional or inaccessible, the Provider shall be liable to the City for an additional \$500.00 for each month. Provided however, the Provider shall have no liability to the City under the provisions of this Paragraph if the solution is nonfunctional or inaccessible due to a general failure of public telecommunications or other event of force majeure.

- b. Provider Availability. The Provider must have expert staff available and accessible via the designated toll-free numbers 99% of the time. Provider must also have staff capable of responding to 90 N. Mountain, Ashland, Oregon, within thirty (30) minutes if necessary, to resolve the problem. If the Provider's staff are inaccessible more than 1.0% in any month, the Provider shall be liable to the City for \$500.00 that month. For each full or partial one-tenth of a percentage point over 1.0% that the system is nonfunctional or inaccessible, the Provider shall be liable to the City for an additional \$250.00 for each such fraction of a percentage per month. The Provider will provide measured results of the occurrence of periods where no staff are available. Provided however, the Provider shall have no liability to the City under the provisions of this Paragraph if the inaccessibility of the Call Center Website is attributable to a general failure of public telecommunications or other event of force majeure.
- c. Internet bandwidth. Service must provide no less than 10 gigabits per second speed 99.9% of the time. If the bandwidth performance drops below 99.9% in any 7-day period, the Provider shall be liable to the City for \$2000.00 (two thousand U.S. dollars) per occurrence. For each full or partial one-tenth percentage point over .1% that the solution does not perform to this standard, the Provider shall be liable to the City for an additional \$500.00 for each 7-day period. Provided however, the Provider shall have no liability to the City under the provisions of this Paragraph if the solution is nonfunctional or inaccessible due to a general failure of public telecommunications or other event of force majeure.
- d. Response Time. Internet bandwidth must maintain packet delay to not exceed 12 milliseconds at 10 gigabits per second. If the packet delay performance rises above this threshold in any 7-day period, the Provider shall be liable to the City for \$2000.00 (two thousand U.S. dollars) per occurrence. For each hour that the solution exceeds the performance threshold, the Provider shall be liable to the City for an additional \$50.00 (fifty U.S. dollars) per hour for each full millisecond over 12 milliseconds. Provided however, the Provider shall have no liability to the City under the provisions of this Paragraph if the solution is nonfunctional or inaccessible due to a general failure of public telecommunications or other event of force majeure.
- e. Provider Response. City staff must receive correct, reliable information about the solution in a timely fashion, as well as answers to questions they have regarding any aspect of its operation as they relate to equipment or any problems caused by the solution to operate in accordance with the Agreement using the contact information and order provided by the Provider. If more than 5% of such calls for assistance remain unresolved for more than two (2) days, the City shall notify Provider of such event as soon as is practicable, explain the specific unresolved complaint, and determine if a violation has occurred for which liquidated damages would be payable. If so, and if within two (2) business days after receipt of such notice, the Provider has failed to satisfactorily resolve said complaint by taking appropriate action to repair/replace hardware or software, or reasonably assist with diagnosing other problems not within the control of the Provider, and to the extent compensation for such damages is not provided for elsewhere in the Agreement. For each full percentage point over 5%, the Provider shall be liable to the

City for an additional \$250 per day. In no event shall the Provider be liable for failure to remedy a problem not within Provider's control, unless the Provider has not provided reasonable assistance in diagnosing other localized problems not within the control of the Provider or provides an incorrect diagnosis due to negligence on the part of the Provider.

- f. Storage of Data. Specific customer data from the City's services shall not be saved or utilized by the Provider for any purpose or reason whatsoever. If any City data is saved, shared, or used in violation of this Agreement, Provider will be liable to the City in the amount of \$100,000 (one hundred thousand dollars) per event. Provided however, the Provider shall have no liability to the City under the provisions of this Agreement for the use of metadata in the administration of its network, nor if specific data is required by law or court order.
- g. Work Orders. The Provider shall have a specific procedure in place to process and execute work orders. This procedure shall account for thorough analysis, design, testing, and implementation of any required changes. If, through no fault of the City, a work order is not accepted by the City as completed within two (2) weeks of its scheduled completion date, the Provider shall be liable to the City for \$1,000 (one thousand dollars) per day until the work order is delivered by the Provider and accepted by the City. The Provider shall be liable to the City for an additional \$200 for each full or partial day of delay beyond the 15th day of the scheduled change or update.

**10.2.** The Provider shall give the City notice of any noncompliant performance immediately upon discovery of such noncompliance.

**10.3.** The Parties agree that damages from breach of this Agreement are difficult to prove or estimate, and the amount of liquidated damages specified herein represents a reasonable estimation of damages that will be suffered by the City from late performance, including costs of additional inspection and oversight and lost opportunity for additional efficiencies that would have attended on-time completion of performance.

## **11. MISCELLANEOUS PROVISIONS.**

**1.1 Indemnification.** Provider shall defend, save, hold harmless and indemnify the City and its officers, employees, and agents from and against any and all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from, arising out of, or relating to the performance of any services pursuant to this Agreement by Provider (including, but not limited to, Provider's employees, agents, and others designated by Provider to perform Work or services under this Agreement). However, Provider shall not be held responsible for any claims, suits, actions, losses, damages, liabilities, costs, and expenses caused solely by the negligence of the City.

**1.2 Non-waiver.** Waiver by either party of the strict performance of any provision of this Agreement shall not waive or prejudice the party's right to require strict performance of the same provision or any other provision in the future. No waiver, consent, modification, or change of the terms of this Agreement shall bind either party unless in writing and signed by all parties. Such waiver,

consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

**1.3 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Jackson County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon.

**1.4 Insurance.** Provider shall obtain and maintain throughout the term of this Agreement Commercial General Liability Insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence for bodily injury, death, and property damage. Such insurance shall include contractual liability coverage for the indemnity provided under this Agreement. Provider shall name the City of Ashland, Oregon, and its elected officials, officers, and employees as additional insureds on any insurance policies required herein but only with respect to Provider’s services to be provided pursuant to this Agreement. As evidence of the insurance coverages required by this Agreement, Provider shall furnish acceptable endorsements of such insurance prior to commencing any services under this Agreement.

**1.5 Litigation and Attorneys’ Fees.** If liquidated damages are not specified for the default that occurs, the City may elect to pursue an action for damages in a court of competent jurisdiction. If any litigation is commenced between the parties concerning this Agreement, or the rights and duties of either party, the prevailing party in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum for that party’s attorneys’ fees, including attorneys’ fees on appeal. The amount of the fees shall be determined by the court in that litigation or in a separate action brought for that purpose.

**1.6 Contract Administration.** This Agreement shall be administered by the Information Technology Department through its AFN Operations Manager and by Provider through the representative listed in Subsection 11.7, Notice. Either party may change its representative by providing the other party written notice of the new representative’s name and address.

**1.7 Notice.** Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery; by sending via a reputable commercial overnight courier; or by mailing using registered or certified United States mail, return receipt requested, postage prepaid, to the address(es) set forth below:

**IF TO THE CITY:**

City of Ashland  
Attn: AFN Operations Manager  
90 N. Mountain Avenue  
Ashland, Oregon 97520

**IF TO PROVIDER:**

Attn:

**1.8 Oregon Law.** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.

**1.9 Assignment.** Provider shall not assign this Agreement or subcontract any portion of the work or services to be provided hereunder without the written consent of the City. Any attempted assignment or subcontract without such written consent shall be void.

**1.10 Amendments.** No amendment to this Agreement will be effective unless it is in writing and signed by both parties.

**1.11 Force Majeure.** Neither party to this Agreement shall hold the other responsible for any damages or delay in performance of this Agreement caused by acts of God, strikes, lockouts, accidents, or other events beyond the reasonable control of the other or the other's officers, employees, or agents.

**1.12 Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Provider and the City as set forth in this Agreement.

**1.13 Entire Agreement.** This Agreement embodies the full and complete understanding and agreement of the parties respecting the subject matter hereof. It supersedes all prior agreements, negotiations, and representations between the parties, whether written or oral.

## **12. PROVIDER'S COMPLIANCE WITH TAX LAWS**

**12.1** Provider represents and warrants to the City that:

12.1.1 Provider shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

12.1.2 Provider, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

**12.2** Provider’s failure to comply with the tax laws of the State of Oregon and all applicable tax laws of any political subdivision of the State of Oregon shall constitute a material breach of this Agreement. Further, any violation of Provider’s warranty, as set forth in this Article 9, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall entitle the City to terminate this Agreement and to seek damages and any other relief available under this Agreement, at law, or in equity.

**IN WITNESS WHEREOF** the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

**CITY OF ASHLAND:**

**PROVIDER:**

\_\_\_\_\_  
Adam Hanks, Interim City Administrator

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date