

Assignment of Agreement

By Order No. 6-17-162 Lincoln County (County) entered into an Agreement with Cogan Owens Greene, LLC¹ in response to a Request for Proposals (RFP) to provide for refinement and development of a Master Plan for the Lincoln County Commons Facilities (Home of the Lincoln County Fair) and for the future design of the main exhibit building and ancillary facilities (Master Plan). Work has begun on the Master Plan activities included in the Agreement.

By letter dated September 20, 2017 County was informed by the firm's principals that Cogan Owens Greene was ceasing operation as a firm, but that all the owners and principals involved in the Master Plan Project are continuing their work with a new entity, 3J Consulting, Inc. that is willing and able to continue work on the project without interruption.²

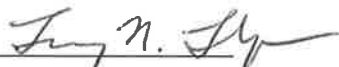
Under the terms of the Agreement between the parties, Paragraph 4, the parties may consent in writing to the transfer of the agreement to another party and the parties desire to continue the work under the Agreement with 3J Consulting, Inc.

Therefore, the parties agree to assign the duties and obligations of Cogan Owens Greene, LLC to 3J Consulting, Inc. effective immediately, under the Agreement authorized by Board of Commissioners' Order No. 6-17-162. No other terms in the Agreement, except as mutually agreed by the parties, will change with this assignment.

So Understood and Agreed by Authorized Representatives of the Parties this 4th day of October, 2017. This assignment may be executed and scanned for separate signatures.

Lincoln County

3J Consulting

By 

By _____

Chair, Lincoln County
Board of Commissioners

Title _____

¹ The Agreement included a number of subcontracted services and providers. Cogan Owens Green was the main contractor.

² This includes all the subcontracted consultants identified in the original agreement.

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Lincoln County

By _____

Chair, Lincoln County
Board of Commissioners

3J Consulting

By  _____ John Howorth

Title President _____

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AGREEMENT

THIS AGREEMENT made this 7th day of June, 2017, by and between **Lincoln County**, hereinafter "County", and **Cogan Owens Greene, LLC**¹ hereinafter "Contractor."

WHEREAS **County** issued a Request for Proposals (RFP) for refinement and development of a Master Plan for the Lincoln County Commons Facilities (Home of the Lincoln County Fair) and for future design of a main exhibit building and ancillary facilities (hereafter Master Plan); and

WHEREAS Cogan, Owens, Greene / LRS Architects and others (see footnote 1) submitted a comprehensive proposal which was chosen by Lincoln County and the Lincoln County Fair Board to provide services for development of the Master Plan. The RFP is by this reference incorporated herein as if fully set forth; in addition the revised scope of work to be completed as set forth on April 19, 2017 is attached hereto as Exhibit "A"; and

WHEREAS **Contractor** initially provided services in two areas: an initial scoping meeting with stakeholders and a public engagement meeting to determine project goals, opportunities, constraints and options. Subsequent to this meeting, an opportunity for a substantial grant became available and the scope of work was revised to provide services in making an application for the grant funding; and

WHEREAS **County** and **Contractor** are prepared to move forward with the revised phasing and scope of services for the project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **SERVICES TO BE PROVIDED:** Phases 1-3 of the Master Plan (attached hereto and incorporated herein as Exhibit "A") shall specifically provide the services and work product to be delivered by **Contractor**. The work shall also be guided by the RFP which by this reference is incorporated herein as if fully set forth.²

2. **PAYMENT:** **Contractor** shall be paid in amounts in accordance with the response to the RFP and Exhibit "A not to exceed as follows:

¹ The response to the County RFP and this Agreement includes services of Cogan Owens Greene, LLC. Cogan Owens Greene will be working with LRS Architects ; JJ Consulting; ECO Northwest; Kittleson and Associates; GreenWorks PC; Halliday Associates, Inc; Interface Engineering; Listen Acoustics; Nishkian Dean, and ACC Cost Consulting. Cogan Owens Greene is the main contractor. All others are subcontractors of the main contractor. Main contractor shall enter into agreements with subcontractors for services identified in this Agreement.

² Phase 4 Services - - the actual design of Commons Facilities, New Main Exhibit Building and Ancillary Facilities Design - - will be undertaken via a separate Agreement which may include modifications of services or timelines based upon the completion of the Master Plan in phases 1-3. The proposed scope of services and timeframes for Phase 4 is included in this Agreement for reference and information.

➤ Phase 1 upon completion of Tasks 1, 2 and 3	\$143,905
➤ Phase 2 upon completion of Tasks 4, 5, 6, 7	\$45,163
➤ Phase 3 upon completion of Task 8	\$62,111
➤ Grand Total	\$251,179

These amounts include reimbursable expenses as outlined in the response to the RFP and Exhibit "A" including the Summary Budget page. These are payments for the Contractor and all subcontractors.

Modifications to due dates may be made upon mutual agreement of the parties reduced to writing and signed by authorized representatives of both parties. **Contractor** shall submit bills which upon **County's** review and acceptance shall be paid within 30 days of receipt by **County**.

3. **TERM OF AGREEMENT**: Agreement shall be effective through completion and acceptance of the Final Master Plan Development by **County** which is projected to be February of 2018 unless otherwise extended by amendment of this agreement.

4. **ASSIGNMENT/DELEGATION**: Neither party shall assign, sublet or transfer any interest in or duty under this agreement without the written consent of the other, and no assignment shall be of any force or affect whatsoever unless and until the other party has so consented.

5. **STATUS OF CONTRACTOR**: The parties intend that **Contractor**, in performing the services specified in this agreement, shall act as an independent **Contractor** and shall have the control of the work and the manner in which it is performed. **Contractor** is not to be considered an agent or employee of the **County** and is not entitled to participate in any pension plan, insurance, bonus or similar benefits **County** provides its employees.

Contractor will not be eligible for any federal social security, state workers' compensation, unemployment insurance or Public Employees Retirement System benefits from this contract payment, except as a self-employed individual.

Contractor and its Subcontractors, if any, working under this contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

If this payment is to be charged against federal funds, **Contractor** certifies that **Contractor** is not currently employed by the federal government and the amount charged does not exceed **Contractor's** normal charge for the type of service provided.

County will report the total amount of all payments to **Contractor**, including any expense, in accordance with Federal Internal Revenue Service and State of Oregon Department of Revenue regulations. **Contractor** shall be responsible for any federal or state taxes applicable to amounts paid under this contract. **Contractor's** Tax ID number shall be provided to **County's** Finance Department.

6. **INDEMNIFICATION**: **County** has relied upon the professional ability and training of **Contractor** as a material inducement to enter into this agreement. **Contractor** warrants that all of **Contractor's** work will be performed in accordance with generally accepted professional practices and standards, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of **Contractor's** work by **County** shall not operate as a waiver or release.

The **Contractor** shall hold harmless, indemnify, and defend **County**, its officers, agents and employees from any and all liability, actions, claims, losses, damages, or other costs including attorney's fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during, or in connection with the performance of the work described in this agreement, except liability arising out of the sole negligence of the **County** and its employees. Such indemnification shall also cover claims brought against **County** under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

7. **INSURANCE**. The **Contractor** shall maintain professional and general liability insurance in amounts not less than the currently effective required minimums of the Oregon Tort Claims Act in full force and effect throughout the term of this contract, unless otherwise agreed to by **County**.

It is agreed that any insurance maintained by **County** shall apply in excess of, and not contribute with, insurance provided by **Contractor**.

Contractor's insurance policy or policies shall provide **County** with a 30-day notice of cancellation. Certificates of insurance evidencing such coverage shall be forwarded to:

Lincoln County Board of Commissioners
Lincoln County Courthouse Room 110
225 West Olive Street
Newport OR 97365

Contractor agrees to deposit with **County** at the time **Contractor** returns the executed contract certificates of insurance or binders of insurance, if the policy is new or has expired, sufficient to satisfy the **County** that the insurance provisions of this agreement have been complied with and to keep such insurance in effect and certificates and/or binders thereof on deposit with the **County** during the entire term of this agreement. Such certificates and/or binders must be delivered prior to commencement of the work.

The procuring of such required insurance shall be construed to limit **Contractor's** liability hereunder. Notwithstanding said insurance, **Contractor** shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

8. **METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS AND MAKING PAYMENTS:** All notices, bills and payment shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

COUNTY: Lincoln County Board of Commissioners
225 W. Olive, Room 110
Newport, Oregon 97365

CONTRACTOR: Cogan Owens Greene, LLC
c/o Steve Faust, Deputy Managing Principal
812 SW Washington Street, Suite 600
Portland, OR 97205

and so when addressed shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

9. **MERGER:** This writing is intended both as the final expression of the agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the agreement. No modification of this agreement shall be effective unless and until it is made in writing and signed by both parties.

10. **TERMINATION WITHOUT CAUSE:** At any time and without cause, the **County** shall have the right, in its sole discretion, to terminate this agreement by giving thirty (30) days written notice to **Contractor**. If the **County** terminates the agreement pursuant to this paragraph, it shall pay **Contractor** for services rendered to the date of termination.

11. **TERMINATION WITH CAUSE:** If **Contractor** fails to perform any of **Contractor's** obligations under this agreement within the time and in the manner provided or otherwise violates any of the terms of this agreement, **County** may terminate the agreement by giving **Contractor** written notice stating the reason for the termination. If **County** terminates pursuant to this paragraph, **Contractor** shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred an amount which bears the same ratio to the total fees specified in the agreement as the services satisfactorily rendered by **Contractor** bear to the total services otherwise required to be performed for such total fee; provided that there shall be deducted from such amount the amount of damage, if any, sustained by **County** due to the breach of the agreement by **Contractor**.

12. **RECORDS**: **Contractor** shall create and maintain records in accordance with generally accepted standards of **Contractor's** practice and the records requirements of **County**, and the state of Oregon. The records shall remain the property of **County** and be made available to COUNTY upon request. **Contractor** shall exercise due care to maintain the confidentiality of client records in accordance with law.

13. **NONDISCRIMINATION**: **Contractor** shall comply with all applicable federal, state and local laws, rules and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or disability.

Contractor further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed by **Contractor** without the express and prior written authorization of the **County**.

14. **CONFLICT OF INTEREST**: **Contractor** covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. The **Contractor** further covenants that in the performance of this contract, no person having any such interest shall be employed.

15. **COMPLIANCE WITH LAWS**: **Contractor** agrees to comply with all federal, state and local laws (which include, but not limited to, statutes, rules ordinances, regulations and other lawful authority) applicable to its services under this agreement, including, without limitation: federal and state civil rights, disability and rehabilitation laws; and the provisions of ORS Chapters 279, 279A, 279B and 279C as applicable, including those attached hereto as Exhibit "B" and incorporated herein.

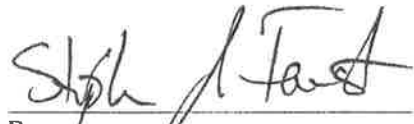
16. **ATTORNEY FEES AND COSTS**: Should any action or suit be instituted by any party to enforce any provision of this contract, the prevailing party shall be entitled to an award of reasonable attorney fees in addition to costs and disbursements. ORS 20.096, 20.097 and ORCP 68.

17. **SEVERABILITY**: The determination that any provision of this contract is in conflict with any federal, state or local constitution, charter, law, ordinance, regulation or order shall not nullify any other provision of this contract. The conflicting provision shall continue in effect to the extent that it remains valid.

18. **CHOICE OF LAW**: The provisions of this contract shall be governed by Oregon law.

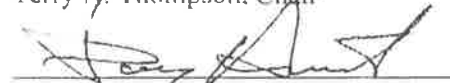
So Understood and Agreed by the Parties:

**COGAN OWENS GREENE, LLC
CONTRACTOR**


By: Stephen Fawst
Principal

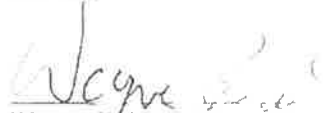
**LINCOLN COUNTY BOARD OF
COMMISSIONERS**


Terry N. Thompson, Chair


Doug Hunt, Commissioner


Bill Hall, Commissioner

**APPROVED AS TO FORM
ONLY:**


Wayne Belmont
County Counsel