

[Publish at least once in one newspaper of general circulation, at least 14 days before closing date, and in as many other issues/publications as the City desires. City Rule 137-0488-0220(2)]

REQUEST FOR PROPOSALS

Pursuant to City Rule 137-048-0220, the City of Newport (City) is conducting a formal qualifications based selection procedure for an architectural firm to plan and design a new aquatic center. The City plans to award to the highest ranked proposer selected from those architects submitting proposals. The anticipated contract will include all design work, site analysis, solicitation of contractors and award of construction contract, construction oversight, and procurement of all necessary permits.

The full Request for Proposals may be obtained from orpin.oregon.gov or contact:

Jim Protiva, Park and Recreation Director
City of Newport
225 SE Avery Street
Newport, OR 97365
Telephone: 541-265-4855
Email: j.protiva@newportoregon.gov

Proposals will be received by the City until closing, 5:00 pm, **May 1, 2014**. Responses received after this time will be rejected as non-responsive. Proposers shall submit proposals in a sealed opaque envelope, plainly marked "**City of Newport Aquatic Center Architectural Consulting Services**" to the City Manager's Office at the below address. Faxed and emailed proposals will be rejected as non-responsive.

Spencer Nebel, City Manager
City of Newport
169 SW Coast Highway
Newport, OR 97365

City of Newport Aquatic Center Architectural Consulting Services

Section I Request for Proposals

The City of Newport (City) intends to select an architect for its new aquatic center, as described in Section II, Project Description, from among proposers who respond to this Request for Proposals. The City intends to enter into a contract, in the form attached as Appendix A, with the selected architect after negotiating a maximum not to exceed dollar amount. The contract amount will be based upon time and materials for all design work rendered, through selection of a construction contractor, procurement of government permits, and construction oversight.

No drawings are required as part of submitted proposals. Proposal clarifications or additional information requested by City must be provided by Proposer within 24 hours of request, excluding weekends and holidays. The City reserves the right to reject any or all Proposals and reserves the right to cancel the RFP at any time if doing either would be in the public interest as determined solely by the City.

Section II Project Description

The City is seeking an architect for its new Aquatic Center Project. The estimated total project cost is \$7.9 million, including architectural fees. The Project and related architectural duties are described as follows:

1. **BACKGROUND:** The purpose of this contract is to provide planning, design and construction administration services for the addition of an aquatic center for the Newport Recreation Center.

The Newport Recreation Center was built in 2001 and is adjacent to the Newport 60 plus Center and City Hall. The existing 47,000 square foot facility includes a double gymnasium, cardio areas, aerobic/dance studio, classrooms and meeting rooms, locker rooms, kitchen and childcare room. It is a multi-generation center serving the citizens of Newport, Lincoln County and numerous traveling guests from outside the area.

The new aquatic center will be integrated into the operations of the Recreation Center and provide aquatics programs and opportunities to youth, families, and seniors. It is imperative that the new aquatic center be designed in a manner that

compliments the existing building and provides for the efficient operation of the entire facility and programs. Some areas of the existing building will need modification or expansion to accommodate the aquatic center.

2. **PROJECT FUNDING:** The project is funded through a General Obligation Bond passed in 2013. The land required for this project is currently owned by the City. \$7.9 million project cost will include 1% for public art.
3. **DRAFT SCOPE OF WORK:** This draft scope of work represents the City's best estimate of the work needed to accomplish the objectives of this project. The City is open to alternative approaches that may deviate from this scope to better meet project objectives. The successful consultant will be expected to enter into a not-to-exceed Professional Services Contract with the City in the form attached as Appendix A.
 - a. Work Plan. Prepare a work plan that details the team approach to the project. The work plan should include specific tasks, a description of products, schedule, reviews, costs by task and discipline, and an explanation of how the team will interact and function. The level of detail required is above and beyond what is needed for the project proposal, and the work plan will be used as a basis for billing and payment.

Product: Work Plan

- b. Existing Physical Conditions Review. Review the existing conditions in-depth, interview staff and provide analysis of existing space and functional deficiencies as necessary. Review Building and Zoning Code requirements and meet with City staff where early interpretation of project requirements is critical.

Product: Documentation of project requirements, including desirable renovations

- c. Architectural Concept and Operations Analysis. A conceptual architectural design has been prepared for the aquatic center. The consultant team will review this conceptual work and design a cost/benefit methodology that considers the cost effectiveness and the community need for each element of the program. The renovation of existing spaces to either accommodate the addition of the aquatic center or improve program uses will also be part of this analysis. To determine the extent of required changes the consultant team will review the current allocation of space in terms of recreation programming and the revenues generated and make recommendations for modifications. Recommendations for the aquatic facility and any renovation of existing program areas must consider 1) people flow and ease of entrance 2) recreation staff and Project Steering Committee advice; 3) cost/benefit projections including both capital and annual operating expenditures; and 4) diversity of people served by the community center

including age, gender and income. The process of determining the final architectural program should be anticipated to take several iterations.

Products: Documentation of programs and operations analysis
Cost analysis of renovations and new construction
Recommendations on capital and annual operating costs
Architectural program
Sustainable design goals

- d. Concept and Schematic Design. Develop conceptual designs that reflect and add to the discussion of architectural program options. Drawings can be simple, line drawings that convey the essence of the idea and enough information to estimate the relative magnitude of costs of each option. These conceptual designs, anticipated to include between two to five options, will be reviewed in public meetings, by Parks staff, and by the Project Steering Committee, and will assist in the determination of the project direction. Conceptual drawings and the associated costs are expected to include site design concepts, including a parking area and traffic flow pattern. Refine the preferred or favored two concept designs into schematic design drawings with enough detail to evaluate the building and site relationship, program functional relationships, access, parking, floor plans, elevations and cross-sections. Analyze the project cost implications of each alternative and document the findings. Analyze the sustainable design elements and document. The schematic design alternatives will form the basis for a public open house where the public is invited to comment on the schemes. The consultants will be expected to elicit and respond to public comments on the image and style of the proposed project in order to reflect the sensibilities of the community.

Develop the preferred schematic components into the final schematic design, including site plan, planting concept, parking configuration, floor plans of all levels identifying all program spaces, all elevations, and two cross-sections with floor heights. Provide a cost estimate on a square foot basis coordinated with the final schematic, and a comprehensive list and schedule for permits.

The final schematic design will be reviewed for accessibility requirements as per the Oregon Structural Specialty Code and the ADA Accessibility Guidelines with particular attention to the clarity of circulation for all age groups and abilities.

During schematic design, special emphasis will be placed on the relationship of the new addition to the existing building and program spaces; between building and site recreation functions as well as an aesthetic sense of the building carefully relating to the environment.

Although the parking improvements designed and constructed as part of this project will be limited to those immediately adjacent to the new aquatic center, a Parking Concept Plan shall be developed identifying the number of spaces and potential location for those spaces that are necessary as identified through the parking demand analysis. (See Section II.3.e, Land Use Permitting, below) The City will develop the additional parking identified in the approved Parking Concept Plan under separate contract.

Products: 2 - 5 concept designs and cost estimates
1 - 2 schematic designs
Parking Concept Plan
Final schematics
Cost estimate
(hard copies of the drawings needed for public meetings)

- e. Land Use Permitting. Consultant is responsible for ensuring design documents satisfy City zoning code requirements and for obtaining any required permit approvals. For required land use applications, Consultant shall prepare supporting narrative and graphics and attend all meetings related to the permit. Meetings may include but are not necessarily limited to a pre-application conference, meetings with City Community Development Director, and public hearing before the Planning Commission. Consultant shall modify plans and documents as necessary to obtain permit approval.

A parking demand analysis will be needed. The analysis is to identify parking needs of the new aquatic center through comparison of like type facilities, evaluate passenger loading requirements, and assess the impact of the new aquatic center on the overall parking and mobility needs of the City Hall campus. The parking demand analysis shall include recommendations for joint use of required parking spaces, and if any variances are needed and justified to City parking standards. Parking Demand Analysis reports are subject to administrative review and approval by the Community Development Director.

While it is possible that no other land use permits will be needed, it may be desirable to pursue an adjustment to height or yard buffer requirements that apply along SE 10th Street. Those requirements are listed in Chapter 14.18 of the Newport Municipal Code.

Product: Permit application documents with supporting graphics

- f. Design Development. Design development will proceed concurrent with land use permitting in order to meet the project schedule, and will include the following drawings: site and utility, architectural, structural, fire protection, plumbing, heating, ventilating, air conditioning, and electrical. Design development outline specifications will include a comprehensive

description of the project and the materials proposed for use in the work. The cost estimate, on a systems basis, will continue to be refined commensurate with the level of detail of information.

The design development process, from concept through finished product, will include significant communication with end users including the recreation staff, as well as facility operations and maintenance staff. The goal is to develop a facility that is consistent with the following objectives:

1. Design Focus

This project will focus on solving the technical and planning challenges involved in adding the new indoor aquatic center in a holistic manner that addresses the functional and aesthetic requirements of the new facilities. Continuous operation of the existing center during construction will be vital and will require careful consideration by the consultant during design.

2. Cost Recovery

The operating budget for the existing building is understood. As uses within the community center change due to the addition of the aquatics program and requests from the public, the operating budget implications must be analyzed. Capital expenditures on new spaces must reflect understanding and consideration of operating cost recovery.

3. Public Participation and Project Steering Committee

Public participation is key to the process of ensuring that the new aquatic center meets the needs of the surrounding community. At least three public workshops will be held to discover the preferences of the community. A Project Steering Committee will be assembled by the Parks and Recreation Director and will make recommendations on how the public input is translated into an architectural program and design. Consultant should plan for a minimum of four meetings with the Project Steering Committee during the design phase.

4. The City of Newport Reviews

The Parks and Recreation Department, Community Development Department, and Department of Public Works will review project plans and specifications. Consultant will need to anticipate a minimum of six combined meetings with these department representatives, and be prepared to respond to their comments.

5. Percent for the Arts

The City of Newport has established a Percent for the Arts Program and a Public Arts Committee. The Percent for the Arts Program requires that one percent of eligible construction costs of a capital improvement project, paid wholly or in part by the City, be allocated for public art. Consultant will be required to meet at least twice with the Public Arts Committee to review the strategy for integration of public art into the facility.

6. Sustainable Design

Environmentally sensitive design and construction is a priority of the City of Newport and can contribute to an excellent project. During the design and construction of the project, decisions will be reviewed for their long-term environmental impact. Areas of concern include: site development, water efficiency, energy efficiency, recycled construction materials, content of building materials, and indoor environmental quality.

7. Locational Considerations

It is anticipated that the new pool will be constructed on the south side of the existing building. The configuration of the pools and supporting areas will be developed with P&R staff and the community. Control desk design, break room location, and potential office space will need to be considered. The aquatic facility is intended to serve a diversity of ages and interests. P&R anticipates there will be two separate pool tanks, one for active sport use, and one for recreation/therapy. It is anticipated that there will be a spa incorporated into the warm water pool but not mandatory. The design of the aquatic environment, mechanical and water treatment systems will be critical to the success of the project.

8. Traffic Flow and Parking

Parking improvements and design will be limited to the adjacent space immediately impacted by the new aquatic center. Special consideration to ADA requirements, drop off/pick up zones, traffic flow and parking optimization will be extremely important.

Products: Design development drawings
Specifications
Cost estimate
Professional quality renderings that illustrate the main project areas.
(Hard copies of drawings needed for public meetings)

- g. Construction Documents and Building Permits. The design development phase will be updated and expanded to construction documents which include all architectural, landscape architectural, structural, civil, mechanical and electrical work for the project with complete specifications, bid package and final cost estimate. The final version of drawings are required to be produced in a CAD format and provided to the City on CD.

Design will require engineering of sanitary sewer service that takes into account existing Recreation Center service. It is believed that re-routing of existing system and tying into the City sewer system at a new location will be in the best interest of the project.

The consultant will be responsible for contacting all applicable local and state officials regarding each utility connection, pool permits, and document that each department responsible for permits or connection approval has agreed to the system's use. Please note that obtaining a building permit may take approximately twelve months, cannot begin until the conditional land use application has been approved, and involves regular communication with the Community Development Director.

Products: Construction document drawings on CD
Specifications
Bid package
Final cost estimate
Utility and building permit approvals

- h. Bid Period Services. Prepare all addenda during the bid period; attend pre-bid meeting(s), answer bidders technical questions, and review bids.

Products: Addenda as required

- i. Construction Period Services. Provide project administration including the following: conduct project meetings; review and approve shop drawings and samples; evaluate and recommend the general contractor's monthly payments; monitor the general contractor's performance; and provide all clarification to construction documents. Day-to-day project inspections will be conducted by City of Newport's construction manager.

Products: Construction period documentation

- j. Construction Close-out. Provide the following services for project completion: commissioning of the building and aquatic systems, develop and monetize the project punch list; check and confirm accuracy of as-built drawings produced by the contractor and incorporate any changes into the final record drawings of the project, obtain all operations and maintenance data; obtain all guarantees and warranties beyond one year; confirm spare parts; and sign final acceptance papers. The aquatic consultant will provide on-site start-up assistance of the aquatic mechanical features and systems and participate in the operations training of facility aquatic personnel.

Products: Record drawings, (2) two hard copy set, (1) one .pdf set, and (1) one .dwg set in AutoCad 2014 format.
Punchlist
Close-out documentation
Building and aquatic commissioning documentation

4. **WORK PERFORMED BY THE CITY:** The City of Newport staff shall make available sufficient hours of staff personnel as necessary to meet with consultant

and provide such information as required. The City has assigned a project manager through Department of Public Works who will oversee the work and provide support as needed.

City will provide selected consultant with all known documents, studies, conceptual drawings of the project site, geotechnical reports and copies of plans of existing building.

5. **MEETINGS:** All public meetings and workshops will take place in Newport, OR at locations of the City's designation. City will prepare press releases and provide public notice in advance of the meetings.
6. **DELIVERY OF WORK PRODUCT:** Unless otherwise specified, it is City's preference that work product be delivered in an electronic format. CAD and GIS data layers developed in conjunction with this project shall be provided to the City at project closeout. All deliverables and resulting work products from this contract will become the property of the City of Newport.

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| Section III Anticipated Contract Performance Schedule |
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The City anticipates having the selected consultant begin work in late May of 2014 with submittal of final deliverables to the City occurring by December of 2015; Construction bidding and award for the project will be completed by May, 2016. Construction shall be completed by May, 2017.

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| Section IV Pre-proposal Meeting |
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A pre-proposal meeting will be held at the City of Newport Recreation Center located at 225 SE Avery Street, Newport, OR 97365 on April 15th, 2014 at 10:00 a.m. The purpose of the meeting is to share information about the project, view the project sites, and answer questions about the project. Proposer's attendance at this pre-proposal meeting is voluntary. Additional documents and information about the project will be available at the meeting. Statements made by City representatives at the meeting are not binding upon the City unless confirmed by written addendum.

**Section V
Submittal Information**

Four (4) hard copy originals, and one (1) .pdf copy on either CD, DVD, or flash drive of each proposal will be received by the City until closing, **5:00 pm, May 1, 2014**. Responses received after this time will be rejected as non-responsive. Proposers shall submit proposals in a sealed opaque envelope, plainly marked "**City of Newport Aquatic Center Architectural Consulting Services**". Faxed and emailed proposals will be rejected as non-responsive. Any late proposals cannot be considered and will be returned unopened. Send or deliver the proposals to:

Spencer Nebel, City Manager
City Manager's Office
169 SW Coast Highway
Newport, OR 97365

**Section VI
Instructions to Proposers**

Please note the following specific requirements for submitted proposals:

1. The City may modify this RFP via addenda before the proposal due date. Please check for regular updates at www.orpin.oregon.gov. Receipt of all addenda must be acknowledged in submitted proposals.
2. Proposers responding to this RFP do so solely at their expense. The City is not responsible for any proposer's expenses associated with responding to this RFP.
3. Proposers should reference the protest procedures set forth in Division 48 of the City's Public Contracting Rules, 2012 version.
4. Each proposal must include the information set forth in Section VII, Proposal Requirements, and address the criteria by which the proposals will be evaluated and ranked, set forth in Section VIII, Proposal Evaluation.

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| Section VII Proposal Requirements |
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1. **PROJECT PROPOSAL REQUIREMENTS:** Proposals should be organized in the following format:
 - a. Cover Letter. Provide a cover letter, signed by a duly constituted official legally authorized to bind the proposer to its proposal. The cover letter must include the name, address, and telephone number of the proposer submitting the proposal and the name, title, address, telephone number, fax number, and email address of the person, or persons, to contact whom are authorized to represent the proposer and to whom correspondence should be directed.
 - b. Project Approach and Understanding. Provide a detailed description of the Consultant's proposed approach demonstrating how the City's objectives will be accomplished as outlined in the above draft Scope of Work. Clearly describe and explain the reason for any proposed modifications to the methods, tasks and products identified in the draft Scope of Work outlined in Section 3 of this document.
 - c. Project Organization and Team Qualifications. Identification of all services to be provided by the principal firm and those proposed to be provided by subcontractors and information regarding the firm(s) assigned to the project including size of firm(s) and overall capabilities of each as considered relevant to this project. Provide information regarding all personnel assigned as team members to this project including names, prior experience, position, role and level of responsibility in the project. The City reserves the right to reject any proposed firm or team member or to request their reassignment. The project manager shall be identified by name and shall not be changed without written approval by the City. The principal consulting firm must assume responsibility for any sub-consultant work and shall be responsible for the day to day management and direction of the project.
 - d. Project Timeline. Proposed timeline for accomplishing the project, including critical paths and milestones, and specific consulting staff by task based on the draft Scope of Work.
 - e. Project Coordination and Monitoring. Describe the process for ensuring effective communication between the Consultant and the City, and for monitoring progress to ensure compliance with approved timeline, budget, staffing and deliverables.

- f. Similar Project Experience. Specific examples of comparable work which best demonstrate the qualifications and ability of the team to accomplish the overall goals of the project under financial and time constraints. Provide names, addresses and telephone numbers of clients associated with each of these projects. Through submission of a proposal, all respondents specifically agree to and release the City of Newport to solicit, secure and confirm information provided.
- g. Proposal shall include, at a minimum, the following items:
- i. The name of the person(s) authorized to represent the responding in negotiating and signing any agreement which may result from the proposal.
 - ii. Name and qualifications of the individual who will serve as the Project Architect.
 - iii. The names of the professional persons who will assist the Project Architect in performing the work and a current résumé for each, including a description of qualifications, skills, and responsibilities. The City is interested in professionals with experience serving small governmental entities and especially designing aquatic centers.
 - iv. Written affirmation that the firm has a policy of nondiscrimination in employment because of race, age, color, sex, religion, national origin, mental or physical handicap, political affiliation, marital status or other protected class, and has a drug-free workplace policy.
 - v. Proof of insurance for a minimum of \$1.3 million professional liability insurance, plus \$1.3 million comprehensive and automobile liability insurance. Proof of coverage by Workers' Compensation Insurance or exemption.
 - vi. A list of the tasks, responsibilities, and qualifications of any subconsultants proposed to be used on a routine basis and proof of adequate professional liability insurance for any subconsultants.
 - vii. The names and current phone numbers of individuals representing three owners, to be used as references. References from public works projects are preferred. Please verify that the references identified had direct contact with your proposed team members.
 - viii. Confirmation that the respondent is an architect licensed to work in the State of Oregon.
 - ix. Confirmation that the proposer will make available the necessary personnel for this work. This should include the proximity of personnel to the City, and affirmation that such personnel can respond to City inquiries and/or be onsite within a maximum of 24-hours.

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| Section VIII Proposal Evaluation |
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1. Evaluation Criteria

| Proposals will be evaluated using the following criteria: | Points |
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| • Thoroughness, quality and conciseness of submittal, including whether or not it adheres to submittal instructions. | 15 |
| • Project understanding and approach for accomplishing the City's objectives. | 15 |
| • Qualifications of the project manager and project team, and proven ability to successfully complete projects of similar scope. | 20 |
| • Ability to complete the Scope of Work in accordance with the schedule outlined in this document. | 15 |
| • References from past and present clients with verification of: project completion timing, budget accuracy, and customers satisfaction | 15 |
| • Proposal incorporates environmentally sensitive design approach sufficient to achieve LEED Silver or greater certification if desired. | 10 |
| • Proximity of proposer to Newport Oregon and ability to appear onsite within 24 hours' notice. | 10 |
| • Results from interviews, if conducted | 20 |
| Total Points Available | 120 |

2. Evaluation Process

Proposals will be initially screened pursuant to the following minimum qualifications:

1. Proposer is an Architect licensed to work in the State of Oregon.
2. Proposer's ability to provide the architectural work needed by City to the standards required by the City, County and State.
3. Whether Proposer has the financial resources for the performance of the desired architectural services, or the ability to obtain such resources.
4. Proposer is an Equal Opportunity Employer and being otherwise qualified by law to enter into the professional services agreement.

Once the initial screening process is completed, the remaining proposals will be evaluated under the criteria and weights accorded in Section VIII.1, above. If the City deems it desirable, the City may elect to interview one or more of the top candidates.

The City is using a qualifications based selection (QBS) process as mandated for contracts anticipated to exceed \$100,000 by recent changes to the state public contracting statutes (ORS 279C.110). As a result, selection of the most qualified candidate will be made without regard to the price of the services. If the City does not cancel the RFP, only after selecting the most qualified candidate will the City and the selected candidate enter into contract negotiations for the price of the services. The City shall direct negotiations toward obtaining written agreement on the Architect's performance obligations, a payment methodology that is fair and reasonable to the City, and any other provisions the City believes to be in the City's best interest to negotiate.

If the City and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the City, the City shall, either orally or in writing, formally terminate negotiations with the selected candidate. The City may then negotiate with the next most qualified candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the City terminates the RFP.

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| Section IX Miscellaneous |
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The City reserves the right to: 1) Seek clarifications of each proposal; 2) Negotiate a final contract that is in the best interests of the City and the public; 3) Reject any or all proposals or cancel this RFP at any time if doing either would be in the public interest, as determined by the City in its sole discretion; 4) Award the contract to any proposer based on the evaluation criteria set forth in this RFP; 5) Waive minor informalities contained in any proposal, when, in the City's sole judgment, it is in the City's best interest to do so; and 6) Request any additional information City deems reasonably necessary to allow City to evaluate, rank and select the most qualified proposer to perform the services described in this RFP.

The services and responsibilities set forth in this RFP, together with any other documents required herein, shall be included in the contract executed by the successful proposer, as indicated in the attached contract form. Any open terms in the attached contract will be completed based upon City negotiation and awardee's proposal. Submittal of a proposal indicates a proposer's intent to execute the attached contract terms and be bound thereby.

**Section X
Contact Information**

Direct all inquiries regarding the City of Newport Aquatic Center and this RFP to:

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| Name & Title: | Jim Protiva, Park and Recreation Director |
| Address: | 169 SW Coast Highway, Newport, OR 97365 |
| Email: | j.protiva@newportoregon.gov |
| Telephone: | 541-265-4855 |

**Section XI
Appendices**

The following appendices are included in this RFP:

Appendix A: Draft Professional Services Contract

DRAFT PROFESSIONAL SERVICES AGREEMENT

<CONTRACT NAME>

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and _____, a <STATE> corporation, which is registered to practice <DISCIPLINE> in the State of Oregon (Consultant).

RECITALS

- A. Pursuant to City Rule 137-048-0220, the City of Newport (City) solicited proposals for professional Consulting services to assist the City in _____.
- B. After reviewing all proposals, the City has selected _____ (Consultant) as the most qualified Consultant to provide the proposed services.
- C. Consultant is willing and qualified to perform such services.

TERMS OF AGREEMENT

1. Consultant's Scope of Services

Consultant shall perform professional Consulting services related to _____
The City is free to utilize other Consultants or consultants as it deems appropriate.

2. Effective Date and Duration

This agreement is effective on execution by both parties and shall expire, unless otherwise terminated or extended, after three years. The parties may extend the term by mutual agreement.

3. Consultant's Fee and Schedules

A. Fee

Fees for services under this Agreement shall be based on time and materials and pursuant to the rates shown in Exhibit A, up to a maximum amount payable of \$_____. Consultant may increase the rates shown in Exhibit A on an annual basis, subject to the written approval of the City. Consultant will alert the City that Consultant when Consultant is increasing its fees. Consultant will bill for progress payments on a monthly basis. In order to determine the maximum monetary limit for each task, Consultant will submit a schedule and a labor hour estimate based on the rates shown in Exhibit A. Consultant will invoice monthly progress payments based on actual time worked on the project. The maximum monetary limit will not be exceeded without prior written approval by the City. Projects partially completed may be paid for in proportion to the degree of completion.

Consultant will be reimbursed for direct charges such as the cost of printing, postage, delivery services, and subconsultant fees. Unless specifically noted in the Task Order, direct charges will

be billed at cost without any markup. Office expenses such as computer cost, telephone calls, and overhead expenses are incidental and are included in the hourly rates shown in Exhibit A.

B. Payment Schedule for Basic Fee

Payments shall be made within 30 days of receipt of monthly billings based on the work completed. Payment by the City shall release the City from any further obligation for payment to the Consultant for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

C. Payment for Contingency Tasks

When agreed to in writing by the City, the Consultant shall provide services described as Contingency Tasks in a Task Order.

D. Certified Cost Records

Consultant shall furnish certified cost records for all billings to substantiate all charges. Consultant's accounts shall be subject to audit by the City. Consultant shall submit billings in a form satisfactory to the City. At a minimum, each billing shall identify the Task Order under such work is performed, work completed during the billing period, percentage of work completed to date, and percentage of budget used to date for each task.

E. Identification

Consultant shall furnish to the City its employer identification number.

F. Payment – General

- 1) Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 2) Consultant shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime. Any subcontractors utilized by Consultant under this Agreement will be paid according to the then prevailing wage.
- 3) Consultant shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Consultant or all sums which Consultant agrees to pay for such services and all moneys and sums which Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

- 4) Consultant shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.
- 5) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to Consultant, sub-consultant or subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due to the Consultant. The payment of the claim in this manner shall not relieve Consultant or its surety from obligation with respect to any unpaid claims.

G. Schedule

Consultant shall provide services under this Agreement in accordance with the Project Schedule.

4. Ownership of Plans and Documents: Records; Confidentiality

A. Definitions. As used in this Agreement, the following terms have the meanings set forth below:

- 1) Consultant Intellectual Property means any intellectual property owned by Consultant and developed independently from this Agreement that is applicable to the Services or included in the Work Product.
- 2) Third Party Intellectual Property means any intellectual property owned by parties other than City or Consultant that is applicable to the Services or included in the Work Product.
- 3) Work Product means the Services Consultant delivers or is required to deliver to City under this Agreement. Work Product includes every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports and other materials, whether completed, partially completed or in draft form.

B. Work Product

- 1) Except as provided elsewhere in this Agreement, all Work Product created by Consultant pursuant to this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a “work made for hire” or an employment to invent, shall be the exclusive property of City. City and Consultant agree that such original works of authorship are “work made for hire” of which City is the author within the meaning of the United States Copyright Act. To the extent that City is not the owner of the intellectual property rights in such Work Product, Consultant hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret,

or any other state or federal intellectual property law or doctrine. Upon City's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in City. Consultant forever waives any and all rights relating to original Work Product created pursuant to this Agreement, 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.

- 2) In the event Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grants to City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use Consultant Intellectual Property, including the right of City to authorize contractors, Consultants and others to use Consultant Intellectual Property, for the purposes described in this Agreement.
- 3) In the event Third Party Intellectual Property is necessary for the use of any Work Product, Consultant shall secure on City's behalf and in the name of City, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third Party Intellectual Property, including the right of City to authorize contractors, Consultants and others to use the Third Party Intellectual Property, for the purposes described in this Contract.
- 4) In the event Work Product created by Consultant under this Agreement is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, including the right of City to authorize contractors, Consultants and others to use the pre-existing elements of Consultant Intellectual Property employed in a Work Product, for the purposes described in this Agreement.
- 5) In the event Work Product created by Consultant under this Agreement is a derivative work based on Third Party Intellectual Property, or a compilation that includes Third Party Intellectual Property, Consultant shall secure on City's behalf and in the name of City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property, including the right to authorize contractors, Consultants and others to use the pre-existing elements of the Third Party Intellectual Property, for the purposes described in this Agreement.
- 6) To the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, Consultant shall be indemnified and held harmless by City from liability arising out of re-use or alteration of the Work Product by City which was not specifically contemplated and agreed to by the Parties in this Agreement.
- 7) Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless otherwise specified, Consultant may use standard line drawings, specifications and calculations on

other, unrelated projects.

C. Confidential Information

- 1) Consultant acknowledges that it or its employees, Sub-Consultants, subcontractors or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is the confidential information of City or City's residents. Any and all information provided by City and marked confidential, or identified as confidential in a separate writing, that becomes available to Consultant or its employees, Sub-Consultants, subcontractors or agents in the performance of this Agreement shall be deemed to be confidential information of City ("Confidential Information"). Any reports or other documents or items, including software, that result from Consultant's use of the Confidential Information and any Work Product that City designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Consultant) publicly known; (b) is furnished by City to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (d) is obtained from a source other than City without the obligation of confidentiality; (e) is disclosed with the written consent of City; or (f) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information; or (g) is required to be disclosed by law, subpoena, or other court order.

- 2) Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to City under this Agreement, and to advise each of its employees, Sub-Consultants, subcontractors and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist City in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise City immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with City in seeking injunctive or other equitable relief in the name of City or Consultant against any such person. Consultant agrees that, except as directed by City, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Agreement, and that upon termination of this Agreement or at City's request, Consultant will turn over to City all documents, papers, and other matter in Consultant's possession that embody Confidential Information.

- 3) Consultant acknowledges that breach of this Section 4, including disclosure of any Confidential Information, will give rise to irreparable injury to City that is inadequately compensable in damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of this Section 4, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of City and are reasonable in scope and content.

5. Assignment/Delegation

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other. If City agrees to assignment of tasks to a subcontractor, Consultant shall be fully responsible for the acts or omissions of any subcontractors. Any approval of a subcontractor does not create a contractual relationship between the subcontractor and City.

6. Consultant is Independent Contractor

- A. The City's project director, or designee, shall be responsible for determining whether Consultant's work product is satisfactory and consistent with this Agreement, but Consultant is not subject to the direction and control of the City. Consultant shall be an independent contractor for all purposes and shall not be entitled to compensation other than the compensation provided for under Section 3 of this Agreement. The City's acceptance of the work product as satisfactory does not relieve the Consultant from responsibility for any errors in the work product.
- B. Consultant is an independent contractor and not an employee of City. Consultant acknowledges Consultant's status as an independent contractor and acknowledges that Consultant is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Consultant to provide services under this Agreement are employees of Consultant and not of City. Consultant acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Consultant is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Consultant under the terms of the Agreement, to the full extent of any benefits or other remuneration Consultant receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make as a result of the finding.
- C. The Consultant represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Consultant, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- D. Consultant and its employees, if any, are not active members of the Oregon Public Employees Retirement System.

- E. Consultant certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- F. Consultant is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. Indemnity

- A. The City has relied upon the professional ability and training of the Consultant as a material inducement to enter into this Agreement. Consultant represents to the City that the work under this Agreement will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the <DISCIPLINE> profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of an Consultant's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Consultant of any responsibility for design deficiencies, errors or omissions.
- B. Consultant shall defend, hold harmless and indemnify the City, its officers, agents, and employees from all claims, suits, or actions to the extent caused by the alleged negligent or otherwise wrongful acts or omissions of Consultant or its subcontractors, sub-Consultants, agents or employees under this Agreement. This indemnification does not extend to indemnification for negligent or otherwise wrongful acts or omissions of the City. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.
- C. Consultant shall save and hold harmless the City, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, to the extent caused by the professional negligent acts, errors or omissions of Consultant or its subcontractors, sub-Consultants, agents or employees in performance of professional services under this Agreement. Any design work by Consultant that results in a design of a facility that does not comply with applicable laws including accessibility for persons with disabilities shall be considered a professionally negligent act, error or omission.
- D. As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly or indirectly, in whole or in part, from the quality of the professional services provided by Consultant, regardless of the type of claim made against the City. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Consultant unrelated to the quality of professional services provided by Consultant.

8. Insurance

Consultant and its subcontractors shall maintain insurance acceptable to City in full force and effect

throughout the term of this Agreement as detailed in this section. The insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Consultant and its subcontractors shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form with policy limits of at least per occurrence. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement in an amount of \$2,000,000.

B. Professional Liability

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per claim shall not be less than \$1,300,000, or the equivalent. Annual aggregate limit shall not be less than \$2,000,000 and filed on a "claims-made" form.

C. Commercial Automobile Insurance

Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,300,000.

D. Workers' Compensation Insurance

The Consultant, its subcontractors, if any, and all employers providing work, labor or materials under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage.

E. Additional Insured Provision

The Commercial General Liability Insurance Policy shall include the City its officers, directors, and employees as additional insureds with respect to this Agreement. Coverage will be endorsed to provide a per project aggregate.

F. Extended Reporting Coverage

If any of the liability insurance is arranged on a “claims made” basis, Extended Reporting coverage will be required at the completion of this Agreement to a duration of 24 months or the maximum time period the Consultant’s insurer will provide if less than 24 months. Consultant will be responsible for furnishing certification of Extended Reporting coverage as described or continuous “claims made” liability coverage for 24 months following Agreement completion. Continuous “claims made” coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this Agreement. Coverage will be endorsed to provide a per project aggregate.

G. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days’ notice of cancellation provision shall be physically endorsed on to the policy.

H. Insurance Carrier Rating

Coverage provided by the Consultant must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

I. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Consultant shall furnish a Certificate of Insurance to the City. No Agreement shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the address below ten days prior to coverage expiration.

J. Primary Coverage Clarification

The parties agree that Consultant’s coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Copy of Policy or Certificate of Insurance

A cross-liability clause or separation of insureds clause will be included in the general liability policy required by this Agreement. Consultant shall furnish City with at least 30-days written

notice of cancellation of, or any modification to, the required insurance coverages. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Timothy Gross, PE
Director of Public Works/City Engineer
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

Thirty days cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance. The procuring of the required insurance shall not be construed to limit Consultant's liability under this agreement. The insurance does not relieve Consultant's obligation for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement.

9. Termination Without Cause

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Consultant. If City terminates the Agreement pursuant to this section, Consultant shall be entitled to payment for services provided prior to the termination date.

10. Termination With Cause

A. City may terminate this Agreement effective upon delivery of written notice to Consultant, or at such later date as may be established by City, under any of the following conditions:

- 1)** If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2)** If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3)** If any license or certificate required by law or regulation to be held by Consultant, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

Any termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of Agreement) to Consultant, may terminate this Agreement:

- 1)** If Consultant fails to provide services called for by this Agreement within the time

specified, or

- 2) If Consultant fails to perform any of the other provisions of this Agreement, or fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.
- C. If City terminates this Agreement, it shall pay Consultant for all undisputed invoices tendered for services provided prior to the date of termination.
- D. Damages for breach of Agreement shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

11. Non-Waiver

The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

12. Notice

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

IF TO CITY OF NEWPORT

IF TO CONSULTANT:

Timothy Gross
Director of Public Works/City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365
541-574-3366
t.gross@newportoregon.gov

The date of deposit in the mail shall be the notice date for first class mail. All other notices, bills and payments shall be effective 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 written notice pursuant to this paragraph.

13. Merger

This writing is intended both as a 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.

14. Force Majeure

Neither City nor Consultant shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractors or supplies due to such cause; provided that the parties so disabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. Non-Discrimination

Consultant agrees to comply with all applicable requirements of federal and state statutes, rules, and regulations. By way of example only, Consultant also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

16. Errors

Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

17. Extra Work

Extra work or work on Contingency Tasks is not authorized unless the City authorizes the additional or contingency work in writing. Failure of Consultant to secure written authorization for extra work shall constitute a waiver of all right to adjustment in the Agreement price or Agreement time due to unauthorized extra work and Consultant shall be entitled to no compensation for the performance of any extra work not authorized in writing.

18. Governing Law

The Agreement is subject to Oregon law. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court in Lincoln County, Oregon.

19. Compliance With Applicable Law

Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including but not limited to those set forth in ORS 279A, B & C. While all required contractual provisions are included in Exhibit B, Consultant shall be familiar with and responsible for compliance with all other applicable provisions of the Oregon Public Contracting Code.

20. Conflict Between Terms

This instrument shall control in the event of any conflict between terms between this document and the RFP and/or proposal.

21. Access to Records

City shall have access to the books, documents, papers and records of Consultant that are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

22. Audit

Consultant shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the Agreement period. Consultant agrees to permit City or its duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

23. Severability

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the Agreement.

24. Industrial Accident Fund Payment

Consultant shall pay all contributions or amount due the Industrial Accident Fund that Consultant or subcontractors incur during the performance of this Agreement.

25. Arbitration

All claims, disputes, and other matters in question between the City and Consultant arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance with the Oregon Uniform Arbitration Act, ORS 36.600, et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Lincoln County Circuit Court will establish rules to govern the arbitration.

A claim by Consultant arising out of, or relating to this Contract must be made in writing and delivered to the City Administrator not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the City Administrator within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the City Administrator will be considered by the City Board at the Board's next regularly scheduled meeting. At that meeting the Board will render a written decision approving or denying the claim. If the claim is denied by the Board, the Consultant may file a written request for arbitration with the City Administrator. No demand for arbitration shall be effective until the City Board has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the

City has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the City Board's decision being binding upon the City and Consultant.

Notice of demand for arbitration shall be filed in writing with the other party to the agreement, subject to applicable statutes of limitation, except as set forth above. The City, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the Consultant to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

26. Attorney Fees

If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this contract without initiating litigation, Consultant agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party

27. Complete Agreement

This Agreement and any exhibit(s) hereto and any and all Task Orders executed by the parties constitute the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Any waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. In the event of a conflict between the documents comprising this Agreement, interpretation shall occur in the following manner: 1) each individual Task Order; 2) this Agreement and any exhibits hereto; and 3) the RFP and Response. The following exhibits are attached to and incorporated into this Agreement:

- A. Exhibit A – Fees;
- B. Exhibit B – Oregon Public Contracting Code/required contractual provisions
- C. Exhibit C – Consultant of Record RFP and Consultant's Proposal.

28. Miscellaneous

- A. Consultant agrees that news releases and other publicity relating to the subject of this Agreement will be made only with the prior written consent of City.
- B. Consultant shall comply with all virus-protection, access control, back-up, password, and other security and other information technology policies of City when using, having access to, or creating systems for any of City's computers, data, systems, personnel, or other information resources.
- C. Consultant will include in all contracts with subcontractors appropriate provisions as required by ORS 279C.580.
- D. Consultant will comply with environmental and natural resources regulations as set forth

in ORS 279B.525 and regulations relating to the salvaging, recycling, composting or mulching yard waste material, and salvage and recycling of construction and demolition debris as set forth in ORS 279B.225 and 270C.510.

By their signatures hereunder, the parties acknowledge they have read and understand this Agreement and agree to be bound by its terms. This Agreement is effective on the date last signed below by a party below:

CITY OF NEWPORT:

Spencer Nebel, City Manager

Date: _____

<CONSULTANT>:

By: _____

Its: _____

Date: _____

EXHIBIT A
CONSULTANT'S FEE SCHEDULE

EXHIBIT B
Oregon Public Contracting Requirements
ORS CHAPTER 279B PUBLIC CONTRACTING REQUIREMENTS
FOR THE PURCHASE OF GOODS AND SERVICES

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1).
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2).
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3).
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617. ORS 279B.220(4).
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1).
- (7) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2).
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq). ORS 279B.235(3).
- (9) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work. ORS 279B.235(2).

- (10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430.
- (11) The contract may be canceled at the election of City for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- (12) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (13) Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors. ORS 279A.110.
- (14) As used in this section, “nonresident contractor” means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a “resident bidder” under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120.

EXHIBIT C
Consultant's Proposal