



Request For Proposals Multi-Jurisdictional Master Plan for Parks and Recreation in Hood River County

DUE DATE AND PROPOSAL OPENING: DECEMBER 21, 2017, 2:00 PM (PST)

PROPOSALS MUST BE SUBMITTED AS FOLLOWS:

By Mail/Hand Delivery To: Mark Hickok, District Director
Hood River Valley Parks and Recreation District
1601 May Avenue
Hood River, OR 97031

Proposals will be opened at the above address.

Introduction or Purpose/Overview

Purpose

Hood River Valley Parks and Recreation District (“Parks District” or “District”), in cooperation with other local agencies – the City of Hood River, Hood River County, and the Port of Hood River – is seeking a professional services team to provide the necessary planning services to develop a Multi-Jurisdictional Master Plan identifying strategies to enhance development and management of parks and recreation facilities in Hood River County.

An important goal for the participating governing bodies of the City of Hood River and Hood River County is to have a parks and recreation plan that each entity can use as part of their respective comprehensive plans.

Overview

Hood River County, located in the heart of the Columbia River Gorge, has a population of approximately 24,000 and a 1.5% projected growth rate through 2035 (PSU Demography Department). The Hood River Valley is a top producer of apples, pears, and cherries, and the area is also known for its world class recreational activities, such as windsurfing, kiteboarding, stand up paddle boarding, white water kayaking, skiing, hiking, and mountain biking.

Hood River Valley Parks and Recreation District is one of a number of parks and recreation providers in the community. Other local parks service providers include Hood River County, the City of Hood River, the Port of Hood River, the Hood River Valley School District, Oregon State Parks, the U.S. Forest Service, and commercial recreation providers. The wide range of recreational facilities or services other agencies offer allows for opportunities for partnerships.

Currently, Hood River County and the City of Hood River do not have specific parks or a parks plan, as mandated by the Statewide Planning Program, “acknowledged” in their existing comprehensive plans. However, both the City and County operate and maintain a number of recreation facilities. As such, lack of acknowledgment from the Department of Land Conservation and Development (DLCD) creates uncertainty, unnecessary permitting challenges, and extended timelines in parks development and review.

A multi-jurisdictional master plan would be beneficial to all participating entities, enabling more effective cooperation and use of resources to more sensibly plan for needed parks and recreation in the community. This in turn would positively impact open space and natural resource protection efforts, contribute to better planned and designed neighborhoods, and enhance recreation-related tourism and economic development.

RFP Contact and Questions

The RFP Contact, identified below, is the sole point of contact regarding the RFP from the date of issuance until selection of the successful consultant. Please direct all questions to the RFP contact. Also, solicitation documents may be reviewed at the address below.

Hood River Valley Parks and Recreation District
Mark Hickok, District Director
1601 May Avenue
Hood River, OR 97031
541.386.5720

Addenda

The Parks District will not mail notice of addenda, but will publish notice of any Addenda on the District’s website. Addenda may be downloaded off the District’s website until Closing, i.e. at least once weekly until the week of Closing and at least once daily the week of the Closing.

Requirements

- Carefully and thoroughly evaluate the scope of services and submission requirements, and any other relevant information. Failure to read, examine and understand the RFP will not excuse any failure to comply with the requirements of the RFP.
- Visit the project site (Hood River County) to become familiar with the general, local and site-specific conditions.
- Consider federal, state, and local laws and regulations, labor availability, and contracts that may affect cost, progress, performance, furnishing of the services, and the work of the project.

Scope of Services

The scope of services is organized into *Tasks* associated for work activity in support of each area of the plan and designed to require the highest standards prevalent in the Consultants field of expertise. The breakdown of tasks and categories may allow the Parks District to choose items

to be completed by the Consultant, items that District Staff may complete, or other ways of phasing the project for maximum progress or efficiency. This is also addressed in the Project Approach element of the method of evaluation section. *The Consultant may suggest alternate methods of approach that meet the project goals.* The project is expected to include the following items in the scope of services:

- Review visions and applicable current and past planning efforts of agencies and existing plans or policy guidance
- Inventory the location and condition of current parks and facilities in the Parks District
- Projections of population growth and demographic characteristics
- Recreation participation trends
- National Level of Service (LOS) standards
- Geographic Distribution within the District, Urban Growth Boundary and impacted parts of unincorporated portions of the County (i.e., Odell, Parkdale, and Oak Grove).
- Identification of unmet needs of residents
- Community outreach through forums and surveying
- Identification of potential areas for significant recreational opportunities
- Identification of inter-agency partnership opportunities
- Recommendations for improving inter-agency cooperation, operational efficiencies, new management structure for the district for affected entities, or consolidating into a single service provider and determining the appropriate tax rate
- Capital Improvement Plan (CIP) lists segregated by (inside UGB, and outside UGB)
- Drafting, final documentation, and adoption of the plan by each participating agency

Task 1: Review and assessment of visions and applicable current and past planning efforts of agencies and local planning and policy review.

The Consultant will review the strategic framework of each agency (Parks District, County, City, School District, Port) to determine the strengths and challenges each agency faces as parks and recreation providers. This review will also inform the development of questions within the Public Involvement process to confirm that they represent the desired direction for a more unified parks and recreation system. As part of this task, the Consultant will complete a review of the following past and related planning documents:

- Hood River Valley Parks and Recreation District
 - 2012 Master Plan
 - Pool Enclosure Study
 - 2017 System Development Charges Methodology
- City of Hood River

- Comprehensive Plan
- Westside Area Concept Plan (working draft)
- Housing Needs Analysis
- Hood River County
 - Comprehensive Plan or related background documents
 - County Charter
- Hood River County School District
 - Fields Master Plan
 - Field Improvement Plan
 - Long Range Facilities Master Plan
 - Facilities Condition Assessments
 - Community Education Program
- Port of Hood River
 - 2014 Strategic Business Plan
- Oregon Statewide Comprehensive Outdoor Recreation Plan (SCORP)
- Oregon's Statewide Planning Goals & Guidelines; Goal 8: Recreational Needs (OAR 660-015-0000(8))

Task 2: Public Involvement Strategy and Implementation

The community outreach process for this project will be critical in engaging the community and building support for the identified needs related to parks and recreation. The Consultant shall determine satisfaction levels of current park conditions and identify unmet needs in the community. Based on the inventory and conditions analysis of existing plans (see below), the Consultant will tailor outreach targeted at identifying what needs are satisfactorily being met, and what needs are not being met. The goal will be to have a variety of ways to gather tangible and diverse public input, including outreach to youth and minority populations, in order gain reliable and valid data of the community's vision for the future planning efforts for parks, recreation, and greenways in the community. Some examples of community outreach may include but are not limited to:

- Focus Group Meetings
- Community Wide Meetings
- Surveys (Mail/Telephone/and Internet)
- Stakeholder and User Group Interviews
- Community Workshops
- Statistically Valid Surveys

Task 3: Inventory and Conditions Report

Develop a comprehensive inventory of existing parks and recreation facilities in the County that will include the following:

- Park type and purpose
- Park location

- Acreage
- Inventory of facilities and amenities
- Assessment of conditions and functionality

The 2012 Hood River Valley Parks and Recreation Master Plan has a comprehensive inventory of parks and facilities that will require minimal updating. The role of the Consultant in this task is primarily to make a conditions report and make a comparative analysis of communities of similar size regionally. The analysis should consider the capacity of each amenity found within the parks system as well as its functionality, accessibility, general condition, and convenience. The Consultant will also produce maps and graphic representations of the parks and recreation system for use both in the plan and outreach materials for the affected agencies.

Task 4: Needs Assessment

The Consultant will produce a needs assessment that addresses current gaps in recreation and parks offerings and projected needs that will enable productive, efficient future inter-agency planning efforts and cooperation. Much of the data will come from existing plans, including but not limited to:

- The Inventory and Conditions Report
- Projections of population growth, demographics characteristics
- Recreation participation trends
- National Level of Service (LOS) Standards
- Geographic distribution within the District
- Public outreach and identified unmet needs of residents
- Identification of areas of significant park and recreational opportunities

Task 5: Develop Recommendations for Hood River Valley Parks and Recreation Operational and Capital Improvements

The Consultant will provide prioritized recommendations for parks, recreational facilities, and programming that meet the needs of Oregon’s Statewide Planning Goals and Goal 8 requirements for the District. The assessment should include recommendations for system-wide improvements: acquiring and developing new parks sites, improving existing parks, operations and maintenance, and recreational programming.

The Consultant will develop estimates of the capital and operational cost for renovation and maintenance of Hood River Valley Parks and Recreation District outdoor facilities, development of additional recreational amenities and land acquisition.

Task 6: Develop Recommendations and Concepts for the Feasibility of Multi-Jurisdictional/Countywide Implementation - Operational and Capital Improvements

Based on recommendations for consolidating one or more parks providers into a single parks and recreation provider, the Consultant will provide a concept implementation plan and associated approximate costs. Factors to consider include, but are not limited to:

- Projected revenue
- Appropriate tax rate to maintain the parks and recreation facilities and programs at the current and realized level of service.
- Identifying associated costs related to Capital Improvements
- Updated Capital Improvement Plan list for each agency (maintenance and operational costs)
- Staffing requirements

Based on the notion that each agency continues to operate parks and recreation facilities, the Consultant will:

- Provide an overview and identify concept strategies to galvanize inter-agency cooperation to meet plan goals, priorities, and analyze how each agency could work together to meet plan goals.
- Identify potential alternative funding sources, including grants, foundations, gifts, sponsorships, fees to meet long range planning goals.

Task 7: Prepare Final Document and Presentation

The Consultant will prepare a reader-friendly administrative draft for inter-agency review and comment. The Consultant will conduct a meeting with staff to review and discuss refinements to the administrative draft.

The Consultant will prepare a final draft, using the feedback from the draft, and the Consultant will present their findings to participating agencies. The Plans should be constructed in a manner that allows participating agencies to potentially adopt the plan as part of their respective guiding strategy plan or Comprehensive Plan.

Request for Clarification

All requests for clarification regarding the specifications of the RFP must be submitted in writing no later than December 7, 2017, to Mark Hickok, District Director, at mark@hoodriverparksandrec.org.

Submittal Requirements/General Evaluation Criteria (100 Total Points)

The following criteria will be used to evaluate the written submittal of the firm's qualifications, along with the possible interviews and other information as the hiring panel deems necessary to responsibly evaluate the qualifications.

- **Firm Information**

Points: 15 / Max Pages: 3

- Statement of interest
- Firm Name, Business Address, Telephone Number for principal place of business as well as the office managing this Project.
- Type of Organization; Partnership, Individual, Corporation, other. List if your firm is owned or partially owned by any other organization or individuals, and state the name and address of said organization or individuals.
- Year in which the firm was established and number of years the firm has provided relevant services.
- The names and education, training and qualifications of the proposed Principal-in-Charge for this project and other personnel of the firm. Also include the same information for associated consultants that would be involved in the project. Describe their experience with similar projects.
- Evidence of insurance coverage: General Liability, Errors and Omissions, Automobile Liability, and Worker's Compensation for the general acceptable limits.
- **Project Experience** **Points: 15 / Max Pages: 3**
 - The firm's experience in working with park and recreation organizations to develop master plans.
 - Provide a complete list of your current and completed master plan projects within the last ten (10) years. Include project names and client contact information.
 - All information regarding any involvement in litigation, arbitration, or mediation with a project similar in size and scope.
- **References** **Points: 10 / Max Pages: 1**
 - A minimum of three (3) related business references, including names, addresses and phone numbers, plus a description of the type of work you performed for them. Include references of other Municipalities/Organizations that your firm has prepared, or assisted in preparation of, Parks Master Plans and agency cooperation.
- **Project Approach** **Points: 35 / Max Pages 6**
 - The firm's general approach and philosophy to parks and recreation master plan projects, and the approach you will use to ensure that this plan is adopted by the participating agencies. What is a typical sequence of work for a project of this nature? Describe typical milestones, key dates, and number of meetings.
 - What role would each agency play in the process?
 - What is your firm's approach to identifying projects and tasks that can be performed by agency staff versus outside contractors?
 - Describe communication methods that your firm will use to ensure project expectations are met.
 - Provide a brief description or list of current projects and associated workload of your firm.

- Explain what distinguishes your firm from others in the field and what makes your firm a good candidate to work with the agencies in our community.
- **Proposal of Fees and Charges** **Points: 25 / Max Pages 2**
 - Provide a preliminary proposal of fees for services associated with this project. Fees shall be subject to negotiation between the firms that best meet the requirement of the RFP and the Parks District with regards to final scope of services.
 - Provide a list of possible reimbursable expense for services requested in this document.

Optional Interviews

The selection committee reserves the right to select a short list of the highest scoring respondents for interviews.

Interviews will be scored based upon the method of evaluation criteria scores.

Project Timeline

- RFP Posted on District Website November 17, 2017
- Clarifications Inquiries December 7, 2017
- Requests for Proposals are Due December 21, 2017
- Interview (optional) January 8-12, 2018
- Firm Selected January 17, 2018

Notice of Award

The Parks District intends to select a single Consultant. The selected Consultant will be identified by the selection committee and a notification letter will be sent to all respondents. Any respondent wishing to appeal the recommendation must do so in writing and within seven (7) business days of the notice being sent.

Submittal Instructions

Proposals shall be submitted in a sealed envelope, or other sealed container, which is clearly marked "Multi-Jurisdictional Master Plan Proposal" and a return address on the envelope. Please provide one (1) digital copy, one (1) original, and six (6) copies of the Proposal. The original should be marked "Original" and must bear an original ink signature authorized to represent the Consultant. Please indicate if you would like the device on which the digital copy is submitted returned to you. **LATE SUBMISSIONS WILL NOT BE ACCEPTED.**

General Terms and Conditions

Prequalification applications are not required.

Responses shall include a certification that proposer has not discriminated and will not discriminate, in violation of ORS 279A.110(1), against any minority, woman or emerging small

business enterprise or against a business enterprise that is owned or controlled by or that employs a disabled veteran in obtaining a required subcontract.

The Parks District will give preference to goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal; and add a percent increase to the bid of a nonresident proposer equal to the percent, if any, of the preference given to the proposer in the state in which the proposer resides. In accordance with ORS 282.210, all printing, binding and stationary work shall be performed within the state of Oregon.

The Parks District may cancel the procurement or reject any or all proposals in accordance with ORS 279B.100.

Final award will be subject to the execution of a Contract. The Contract shall be substantially in the form attached to this Request for Proposals.

The Parks District reserves the right to modify or incorporate additional steps in the evaluation process in the interest of having a thorough and comprehensive body of information to make a recommendation.

Exhibit A
HOOD RIVER VALLEY PARKS AND RECREATION DISTRICT
CONSULTANT SERVICES CONTRACT

DATE: _____

PARTIES: Hood River Valley Parks ("District")
And Recreation District
1601 May Avenue
Hood River, OR 97031

_____ ("Contractor")

RECITALS

Contractor is being engaged to provide professional consultant services for the District.

NOW, THEREFORE, BASED ON THE MUTUAL PROMISES OF THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

- 1. Contract Period.** This Contract shall be effective as of the date first written above. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate upon completion and final acceptance of the Work by the District. Contract termination does not extinguish or prejudice District's right to enforce this Contract with respect to any default by Contractor that has not been cured.
- 2. Statement of Work.** Contractor shall perform the work (the "Work") as set forth in the Scope of Work described in the Request For Proposal documents attached as Exhibit A. Contractor shall perform the Work in accordance with the terms and conditions of this Contract. To the extent that the terms and conditions of this Contract and any attachments conflict, the terms and conditions of this Contract shall control.
- 3. Consideration**

 - a.** The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes in-house expenses, is \$_____. Out-sourced expenses will be reimbursed only if District has authorized the out-sourced expense by written addenda. District will not pay Contractor any unapproved amounts in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
 - b.** Contractor shall submit monthly invoices to the District for Work performed. The invoices shall describe all Work performed with particularity and by whom it was performed and shall itemize and explain all expenses that this Contract requires District to pay and for which Contractor claims

reimbursement. Each invoice also shall include the total amount invoiced to date by Contractor prior to the current invoice.

4. Contract Documents. This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibit A (RFP documents), and Exhibit B (Required Insurance). Exhibits A-B are attached to this Contract and incorporated by this reference.

5. Independent Contractor; Responsibility for Taxes and Withholding

a. Contractor shall perform all Work as an independent contractor. The District reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, the District may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

b. Contractor understands and agrees that it is not an "officer", "employee", or "agent" of the District, as those terms are used in ORS 30.265.

c. Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, District will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

6. Subcontracts, Successors, and Assignments

a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract without District's prior written consent. In addition to any other provisions District may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that District will receive the benefit of subcontractor performance as if the subcontractor were the Contractor under this Contract. District's consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Contract.

b. This Contract is binding upon and inures to the benefit of the parties, their respective successors, and permitted assigns, if any.

c. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without District's prior written consent.

7. No Third Party Beneficiaries. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or may be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of the terms of this Contract.

9. Representations and Warranties.

a. Contractor's Representations and Warranties. Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its

terms, (3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession, (4) Contractor will, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work, and (5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. Warranties cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

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10. Confidential Information.

a. Contractor acknowledges that it or its employees, subcontractors or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is the confidential information of District or District's clients. Any and all information provided by District and marked confidential, or identified as confidential in a separate writing, that becomes available to Contractor or its employees, subcontractors or agents in the performance of this Contract shall be deemed to be confidential information of District ("Confidential Information"). Any reports or other documents or items, including software, that result from Contractor's use of the Confidential Information and any Work Product (as defined below) that District 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 Contractor) publicly known; (b) is furnished by District to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than District without the obligation of confidentiality; (e) is disclosed with the written consent of District; or (f) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor 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 District under this Contract, and to advise each of its employees, subcontractors and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise District immediately in the event Contractor 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 Contract and Contractor will at its expense cooperate with District in seeking injunctive or other equitable relief in the name of District or Contractor against any such person. Contractor agrees that, except as directed by District, Contractor will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at District's request, Contractor will turn over to District all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

c. Injunctive Relief. Contractor acknowledges that breach of this Section 10, including disclosure of any Confidential Information, will give rise to irreparable injury to District that is inadequately compensable in damages. Accordingly, District may seek and obtain injunctive relief against the breach or threatened breach of this Section 10, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of District and are reasonable in scope and content.

d. Security. Contractor shall comply with all virus-protection, access control, back-up, password, and other security and other information technology policies of District when using, having access to, or creating systems for any of District's computers, data, systems, personnel, or other information resources.

11. Ownership of Work Product.

a. Definitions. As used in this Section 11, and elsewhere in this Contract, the following terms have the meanings set forth below:

(i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Work.

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(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than District or Contractor.

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to District pursuant to the Work.

b. Original Works. All Work Product created by Contractor pursuant to the Work, 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 District. District and Contractor agree that original works of authorship are "work made for hire" of which District is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Contractor hereby irrevocably assigns to District any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon District's reasonable request, Contractor shall execute further documents and instruments necessary to fully vest such rights in District. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, 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.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to District an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on District's behalf.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the District's behalf and in the name of the District an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property

employed in the Work Product, and to authorize others to do the same on District's behalf.

c. Contractor Intellectual Property. In the event that Work Product is Contractor Intellectual Property Contractor hereby grants to District an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on District's behalf.

d. Third Party Works. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the District's behalf and in the name of the District, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on District's behalf.

e. Limited District Indemnity. To the extent permitted by the Oregon Constitution and the Tort Claims Act, Contractor shall be indemnified and held harmless by District from liability arising out of re-use or alteration of the Work Product by District which was not specifically contemplated and agreed to by the parties.

f. Contractor Use of Work Product. Contractor may refer to the Work Product in its brochures or other literature that Contractor utilizes for advertising or promotional purposes and, unless otherwise specified by District, may use the Work Product on other unrelated projects.

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12. Indemnity.

a. GENERAL INDEMNITY. CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE DISTRICT AND ITS OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (TOGETHER "LIABILITIES") RESULTING FROM OR ARISING OUT OF THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS SUBCONTRACTORS, AGENTS OR EMPLOYEES UNDER THIS CONTRACT, EXCEPT THAT CONTRACTOR IS NOT OBLIGATED TO INDEMNIFY THE DISTRICT TO THE EXTENT THE LIABILITIES RESULT FROM OR ARISE OUT OF THE DISTRICT'S NEGLIGENT ACTS OR OMISSIONS.

b. PROFESSIONAL INDEMNITY. CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE DISTRICT AND ITS OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES ARISING OUT OF THE PROFESSIONALLY NEGLIGENT ACTS, ERRORS OR OMISSIONS FO CONTRACTOR OR ITS SUBCONTRACTORS, AGENTS OR EMPLOYEES IN THE PEROFRMANCE OF THIS CONTRACT.

c. CONTROL OF DEFENSE AND SETTLEMENT. CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 12.a OR 12.b; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND THE CLAIM IN THE NAME OF THE DISTRICT, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE DISTRICT OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE DISTRICT'S ATTORNEY, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE DISTRICT'S ATTORNEY, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE DISTRICT, NOR SHALL CONTRACTOR SETTLE ANY CLAIM ON BEHALF OF THE DISTRICT WITHOUT THE APPROVAL OF THE DISTRICT'S ATTORNEY. THE DISTRICT MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE DISTRICT DETERMINES THAT CONTRACTOR IS PROHIBITED FROM DEFENDING THE DISTRICT, OR IS NOT ADEQUATELY DEFENDING THE DISTRICT'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE

DISTRICT DESIRES TO ASSUME ITS OWN DEFENSE.

13. Insurance. Contractor shall maintain in effect for the duration of this Contract the insurance as set forth in attached Exhibit B.

14. Default; Remedies; Termination.

a. Default by Contractor. Contractor is in default under this Contract if:

(i) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

(ii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after District's notice or such longer period as District may specify in the notice; or

(iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and the breach, default or failure is not cured within fourteen (14) calendar days after District's notice, or any longer period as District may specify in the notice.

b. District's Remedies for Contractor's Default. In the event Contractor is in default under Section 14.a, District may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

(i) termination of this Contract under Section 14.e(ii);

(ii) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;

(iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;

(iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections 14.a, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 14.e(i).

c. Default by District. District is in default under this Contract if:

(i) District fails to pay Contractor any amount pursuant to the terms of this Contract, and District fails to cure the failure within thirty (30) calendar days after Contractor's notice or any longer period as Contractor may specify in the notice; or

(ii) District commits any material breach or default of any covenant, warranty, or obligation under this Contract, and the breach or default is not cured within thirty (30) calendar days after Contractor's notice or any longer period as Contractor may specify in the notice.

d. Contractor's Remedies for District's Default. In the event District terminates the Contract under Section 14.e(i), or in the event District is in default under Section 14.c and whether or not Contractor elects to exercise its right to terminate the Contract under Section 14.e(iii), Contractor's sole monetary remedy is (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred and interest within legal limits, and (b) with respect to deliverable-based Work, a claim for the sum

designated for completing the deliverable multiplied by the percentage of Work completed and accepted by District, less previous amounts paid and any claim(s) that District has against Contractor. In no event is District liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 14.d, Contractor shall pay immediately any excess to District upon written demand provided in accordance with Section 20.

e. Termination.

(i) District's Right to Terminate at its Discretion. At its sole discretion, District may terminate this Contract:

- (A) For its convenience upon thirty (30) days' prior written notice by District to Contractor;
- (B) Immediately upon written notice if District fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or
- (C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the District's purchase of the Work or Work Products under this Contract is prohibited or District is prohibited from paying for such Work or Work Products from the planned funding source.

(ii) District's Right to Terminate for Cause. In addition to any other rights and remedies District may have under this Contract, District may terminate this Contract immediately upon written notice by District to Contractor, or at such later date as District may establish in the notice, or upon expiration of the time period and with the notice as provided in Section 14.e(ii)(B) and 14.e(ii)(C) below, upon the occurrence of any of the following events:

- (A) Contractor is in default under Section 14.a(i) because Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;

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- (B) Contractor is in default under Section 14.a(ii) because Contractor no longer holds a license or certificate that is required for it to perform services under the Contract and Contractor has not obtained the license or certificate within fourteen (14) calendar days after District's notice or any longer period as District may specify in such notice; or

- (C) Contractor is in default under Section 14.a(iii) because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and the breach, default or failure is not cured within fourteen (14) calendar days after District's notice, or any longer period as District may specify in such notice.

(iii) Contractor's Right to Terminate for Cause. Contractor may terminate this Contract with written notice to District as provided in Sections 14.e(iii)(A) and 14.e(iii)(B) below, or at such later date as Contractor may establish in the notice, upon the occurrence of the following events:

- (A) District is in default under Section 14.c(i) because District fails to pay Contractor any amount pursuant to the terms of this Contract, and District fails to cure such failure within thirty (30) calendar days after Contractor's notice or any longer period as Contractor may specify in the notice; or
- (B) District is in default under Section 14.c(ii) because District commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its

commitments hereunder within the time specified or any extension thereof, and District fails to cure the failure within thirty (30) calendar days after Contractor's notice or any longer period as Contractor may specify in the notice.

(iv) Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to District all of District's property (including without limitation any Work or Work Products for which District has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such District property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in the notice of termination. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

15. Records Maintenance; Access. Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in a manner that clearly documents Contractor's performance. Contractor acknowledges and agrees that District and its duly authorized representatives shall have access to the financial records and other books, documents, papers, plans, records of shipments and payments and writings of Contractor that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all the financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or any longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

16. Compliance with Applicable Law. Contractor shall employ the same professional skill, care, and diligence as other professionals providing similar services under similar conditions to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg)).

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17. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract.

18. Force Majeure. Neither District nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of District or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

19. Time is of the Essence. Contractor agrees that time is of the essence under this Contract.

20. Notice. Except as otherwise expressly provided in this Contract, any communications between the parties or notices to be given under this Contract shall be given in writing, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address, number or email address set

forth in this Contract, or to any other addresses or numbers as either party may indicate pursuant to this Section 20. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against District, any notice transmitted by facsimile must be confirmed by telephone notice to District's Director. Any communication or notice given by personal delivery shall be effective when actually delivered.

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

22. Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

23. Governing Law; Venue; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between District and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Hood River County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

24. Merger Clause; Waiver. This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

25. Amendments. No amendment to this Contract is effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained before becoming effective.

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR

By: _____
Title: _____

Facsimile number: _____
Federal Tax Number: _____
Oregon/State Tax Number: _____

DISTRICT

Mark Hickok
District Director

**EXHIBIT B
INSURANCE REQUIREMENTS**

Contractor shall, at its own expense, at all times during the term of this contract, maintain in force:

1. A comprehensive general liability policy including coverage for contractual liability for obligations assumed under this contract, blanket contractual liability, products and completed operations and District's and contractor's protective insurance;
2. A professional errors and omissions liability policy; and
3. A comprehensive automobile liability policy including owned and non-owned automobiles.

The coverage under each liability insurance policy shall be equal to or greater than the limits for claims made under the Oregon Tort Claims Act with minimum coverage of \$2,000,000 per occurrence (combined single limit for bodily injury and property damage claims). Provided, however, that coverage for professional errors and omissions liability may be for a minimum coverage of \$100,000. The coverage limits are subject to change in accordance with any changes in limits under the Oregon Tort Claims Act, or to the extent the District deems necessary to cover the District's liability in the absence of the Oregon Tort Claims Act.

Liability coverage shall be provided on an "occurrence" basis. "Claims made" coverage will not be acceptable, except for the coverage required by (2) above. The District shall be named as an additional insured (except for coverage required by 2 above).

Certificates of insurance acceptable to the District shall be filed with District prior to the commencement of any work by Contractor. Each certificate shall state that coverage afforded under the policy cannot be cancelled or reduced in coverage until at least 30 days prior written notice has been given to District. A certificate which states merely that the issuing company "will endeavor to mail" written notice is unacceptable.

