

CITY OF SCAPPOOSE
REQUEST FOR PROPOSALS (RFP)
for
ON-CALL HYDROGEOLOGIC SERVICES
RFP #2022-01



SCAPPOOSE
Oregon

Issue Date: February 18, 2022
Proposal Due Date: April 21, 2022

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SECTION 1 – GENERAL INFORMATION

1.1 Background

The City of Scappoose, Oregon, invites qualified consultants to submit responses to this Request for Proposals (RFP) for On-Call Hydrogeologic Services. The City is seeking a qualified consultant(s) to assist with the City's hydrogeology needs on an on-call basis. The City reserves the right to make multiple contract awards and assignments of work as deemed to be in the best interests of the City.

The City requires professional hydrogeologic services related to the City's water system, including supply planning and development, permitting, data evaluation and analysis, source performance monitoring, water rights management, permit compliance monitoring, well design, grant writing support, and other related assignments as requested by the City. The City would like to retain the selected firm for a term of five (5) years with the option to renew annually thereafter up to a maximum of five (5) additional years, if agreeable to both the City and the selected firm.

The City of Scappoose – population 8,010 – is located 23 miles northwest of Portland, in Columbia County, Oregon. The City's water system is comprised of two water treatment plants (WTPs), three surface water sources, six wells, two pump stations, four reservoirs, three pressure reduction stations, and more than 50 miles of transmission and distribution piping ranging from 2" to 24" in diameter.

The Keys WTP treats both surface and groundwater. The Keys WTP provides treatment of the City's surface water and groundwater supplies. The City's surface water supply comes from three remote sources, South Scappoose Creek and its tributaries Lazy Creek and Gourlay Creek. The water from these sources flow by gravity to the Keys Road WTP. Groundwater from three wells located near the intersection of Dutch Canyon Road and Old Portland Road is pumped to the Keys WTP. Following treatment, water is pumped to two onsite storage reservoirs at the Keys WTP. These reservoirs serve the lower pressure zone, the predominant pressure zone in the City. A booster pump station at the Keys WTP boosts water to two storage reservoirs at the end of Bella Vista Drive that serve a high-pressure zone. A remote booster pump station in Dutch Canyon boosts the pressure from the lower zone to provide service to a limited number of residences on Glen View Lane and upper Dutch Canyon.

The Miller WTP, located at the north end of Miller Road, provides treatment of groundwater only. Groundwater is pumped from one vicinity well and three on-site wells for treatment, then subsequently into the distribution system.

More detailed information on the existing water system, as well as necessary future improvements to the system can be found on the City's website in the [City of Scappoose Water System Master Plan \(2020\)](#).

1.2 Invitation

The City of Scappoose invites qualified firms to submit proposals to this Request for Proposals (RFP) for On-Call Hydrogeologic Services.

This RFP contains the necessary information to understand the desired qualifications, the consultant selection process, and the required documentation in submitting a proposal. Procurement documents may be obtained from the City's website at: <http://www.ci.scappoose.or.us/rfps>.

1.3 Schedule

Action	Location	Date	Time
Solicitation Advertisement	Business Tribune, Spotlight, City Website	2/18/2022	-
Optional Pre-Proposal Meeting	Microsoft Teams	3/16/2022	2:00 PM
Pre-Proposal Questions Due	Email	4/6/2022	3:00 PM
Responses to Pre-Proposal Questions Distributed by City	Email, City Website	4/13/2022	3:00 PM
Proposals Due	Email	4/21/2022	3:00 PM
Interviews (if held)	Microsoft Teams	TBD	TBD
Selection Committee Recommendation	-	TBD	TBD
Contract Negotiations with Successful Proposer(s) Conclude		5/4/2022	-
Notice of Intent to Award Contract		5/4/2022	-
Challenge Period Expires		5/11/2022	TBD
City Council Approval of Contract	City Council	5/16/2022	7:00 PM
Begin Contract (Estimated)		7/1/2022	TBD
Contract Expiration (prior to possible extension)		6/30/2027	-

These dates are approximate and subject to change at the sole discretion of the City

1.4 Contact

All correspondence pertaining to this RFP should be directed to:

Huell Whitehaus, Assistant to Public Works Director, City of Scappoose, 33568 E Columbia Ave, Scappoose, OR, 97056, hwhitehaus@cityofscappoose.org, (503) 543-7146, ext. 234.

1.5 Proposal Withdrawal

Any proposal may be withdrawn at any time before the “Proposal Due” date and the time specified in **Section 1.3 Schedule**, by providing a written request for the withdrawal of the proposal to the City. A duly authorized representative of the firm shall execute the request. Withdrawal of a proposal will not prejudice the right of the proposer to file a new proposal on this or future solicitations. Proposals may not be withdrawn within thirty days (30) after the proposal due date.

1.6 Rejection or Acceptance of Proposals

The City may reject or accept any or all proposal or parts thereof, submitted in response to this RFP. The City expressly reserves the following rights to:

- Disregard any or all irregularities in the proposals
- Reject any or all proposals or portions thereof upon finding it is in the public interest to do so

- c. Base award with due regard to the quality of services, experience, compliance with the RFP, and other factors as may be necessary under such circumstances
- d. Reject all proposals and re-advertise at the City's sole discretion

1.7 Evaluation and Selection of Consultant

An evaluation committee of at least three members will be appointed to evaluate the proposals received. For scoring proposals, each member will evaluate each proposal in accordance with the **Content and Evaluation Criteria** listed below and detailed at greater length in Section 3. The evaluation committee may seek outside expertise, including but not limited to, input from technical advisors, to assist in the evaluation process.

The successful Consultant(s) shall be selected by the following process:

- a. An evaluation committee will be appointed to evaluate submitted written proposals
- b. The committee will score proposals according to the evaluation criteria
- c. A short list of Consultants, based on the highest scores, *may* be selected for interviews
- d. Final scores, based on the same evaluation criteria, will be determined

Content and Evaluation Criteria	Maximum Pages	Maximum Score
1. Introductory Letter	2	5
2. Mandatory Exhibit A	1	Pass/Fail
3. Organizational Structure and Experience (include at least three relevant examples)	8	40
4. Approach to Project Management and Quality Control	3	20
5. Project Team	4	30
Appendix: Key Staff and Team Member Resumes (No more than two pages per resume)	-	
6. Proposal Clarity	-	5
Totals	18	100
Interviews (if held)		100
Totals		200

Qualifications-Based Selection

As a matter of a Qualifications-Based Selection (QBS), the City will attempt to reach a final agreement with the highest scoring proposer. However, the City may, in its sole discretion, terminate negotiations and reject the proposal if it appears agreement cannot be reached. The City may then attempt to reach a final agreement with the second highest scoring proposer and may continue on, in the same manner, with remaining proposers until an agreement is reached.

Review

Following issuance of the Notice of Intent to Award, Consultants that were not selected for contract award may seek additional clarification or debriefing, request time to review the selection procedures, or discuss the scoring methods utilized by the evaluation committee.

Protest of Contract Awards

Protests may be submitted to the City Manager only from those Consultants who would receive the contract if their protest was successful.

Protests must be in writing and received by the City Manager within seven (7) calendar days, UNLESS OTHERWISE NOTED, following the issue date of the City's Notice of Intent to Award. The protest must specifically state the reason for the protest and show how its proposal or the winning proposal was miss-scored or show how the selection process deviated from that described in the solicitation document. No contract will be awarded until the protest has been resolved.

Protests must be timely and must include all legal and factual information regarding the protest and a statement of the form of relief requested. Protests received later than specified or from other than the Consultant who would receive the contract if the protest was successful will not be considered. The exercise of judgment used by the evaluators in scoring the written proposals and interviews, including the use of outside expertise, is not grounds for appeal.

The City Manager may waive any procedural irregularities that had no material effect on the selection of the proposed Consultant, invalidate the proposed award, amend the award selection, request the evaluation committee re-evaluate any proposal or cancel the solicitation and begin again to solicit new proposals. The City Manager shall create a written opinion on the protest and forward that opinion to the City Council for further action. Should the City Council return the matter to the evaluation committee, the City shall issue a notice cancelling the Notice of Intent to Award.

Decisions of the City Council are final and conclude the administrative appeals process.

1.8 Insurance

The City's insurance requirements are described in the Sample Contract in Section 4 (pp. 16 – 18).

1.9 Execution of Contract

It is anticipated that the total cost for the services contemplated by this solicitation will require authorization by City Council. The contract should be signed within a week of Council award of the contract.

1.10 Public Records

Any materials submitted by the proposer shall become the property of the City unless otherwise specified. During the evaluation of proposals and the selection of the Consultant, the proposals shall be confidential. After the selection process has been completed, the proposals shall be open to public inspection. Proposals should not contain any information which the proposers do not wish to become public. If it is necessary to submit confidential information in order to comply with the terms and conditions of the RFP, each page containing confidential information should be clearly marked "NOT FOR PUBLIC DISCLOSURE CONFIDENTIAL TRADE SECRETS." The City accepts no liability for the inadvertent or unavoidable release

of any confidential information submitted, and any claims arising out of any public record request for such information shall be at the proposer's expense.

1.11 Recycled Products Statement

Proposers shall use recyclable products to the maximum extent economically feasible in the preparation of the proposals, and the selected proposer shall continue the same practice in the performance of the contract work in accordance with ORS 279B.270.

1.12 Federal/State/Local Requirements

The selected proposer shall comply with all Federal, State, and local laws, as well as all regulations, executive orders, and ordinances applicable to the work under this contract. In addition, the proposers agree to comply with:

- a. Title VI of the Civil Rights Act of 1964;
- b. Section V of the Rehabilitation Act of 1973;
- c. The Americans with Disabilities Act of 1990 and ORS 659.425;
- d. All regulations and administrative rules established pursuant to the foregoing laws and;
- e. All other applicable requirements of Federal and State civil rights and rehabilitation statutes, rules, and regulations.

Proposer is subject to the Oregon Worker's Compensation Law and shall comply with ORS 656.017, which requires the provision of Worker's Compensation coverage for all employees working under this contract. The City's programs, services, employment opportunities and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, disability, or political affiliation.

1.13 Payment

The City will pay the Consultant(s) under contract for services performed based on the approved rates, the scope of work completed, and anticipated reimbursement expenses. The City will make monthly progress payments within thirty (30) calendar days following receipt of properly itemized invoices.

Payment for extra work not described in the scope of services will only be made when authorized in advance and in writing by the City's Project Manager prior to such work being performed by the Consultant.

If the Consultant anticipates that the fee is going to surpass the not-to-exceed figure because a task has changed and is outside the agreed upon scope, the Consultant shall notify the City in writing of the circumstances with an estimated amount that the fee is to be exceeded. The Consultant shall obtain written permission from the City before exceeding the not-to-exceed fee amount. If the consultant does work that exceeds the maximum fee amount prior to obtaining the written permission, the Consultant waives any right to collect that exceeding amount.

1.14 Incurred Costs

The City is not liable for any costs incurred by proposers in the preparation and/or presentation of their proposals or interviews (if held).

SECTION 2 – SCOPE OF WORK

2.1 Scope of Work

The Consultant shall provide adequate personnel and resources to accomplish the objectives of the Project – key personnel must be identified.

The Consultant shall provide a wide range of responsible and responsive professional services including, but not limited to project management, planning, design, including preparation of plans, specifications, estimates, environmental review/permitting and construction support services. The Consultant is expected to provide a highly qualified and experienced team and be able to deliver satisfactory products according to the tasks indicated in this scope of work.

Generally, only the major tasks along with general expectations and requirements are outlined. The Consultant is encouraged to expand and elaborate on this general scope of work. The Consultant should outline and discuss their proposed scope of work and approach under these major tasks. If the Consultant believes that changes or additions to this scope of work will provide benefit to the City, the Consultant is encouraged to present their proposed changes or additions.

All recommendations and information produced in this project shall comply with applicable Federal, State, and local regulations and requirements.

Tasks

1. Assist City staff in responding to an/all request(s) for information from Oregon Water Resources Department (OWRD), Oregon Department of Environmental Quality (DEQ), Oregon Health Authority's Drinking Water Program (OHA-DWP) pertaining to the management of the City's water rights.
2. Permit applications and compliance pertaining water rights or treatment infrastructure
3. Water rights management
4. Water conservation requirements and recommendations
5. Water supply planning and development
6. Well field management, including source performance data evaluation and tracking
7. Well design
8. Environmental monitoring
9. Regulatory compliance support
10. Grant writing support and technical assistance
11. Other projects as assigned

SECTION 3 – PROPOSAL REQUIREMENTS

Adherence to these requirements will ensure a fair and objective analysis of the proposals. To receive consideration, proposals must be in accordance with the following instructions:

3.1 Proposal Submittal

Electronic submittal of proposals is encouraged and must be submitted to the below email address:

hwhitehaus@cityofscappoose.org

If the proposer elects to submit a hardcopy in-person, proposals will be received by the City of Scappoose until **April 21 at 3:00 pm**, local time at Scappoose City Hall in sealed envelopes marked with the following:

33568 E. Columbia Ave., Scappoose, Oregon 97056

Attn: Huell Whitehaus, Assistant to Public Works Director

RE: On-Call Hydrogeologic Services, RFP #2022-01

Proposals will not be received after such date and time indicated above.

The City recognizes that in the submittal of proposals, certain information is proprietary to the consultant and that the safeguarding of information is necessary. Accordingly, the City will make every effort to prevent any disclosure of data supplied by any consultant where the consultant identifies those portions of its proposal that are proprietary (see Section 1.10).

3.2 Proposal Format

Consultants are **strongly encouraged** to submit proposals electronically via email but may elect to submit hard copies. If submitting a hard copy, consultants must include **three** hard copies of their proposal and one electronic copy on a portable USB drive. To provide a degree of consistency in review of the written proposals, firms are requested to prepare their proposals in the standard format specified below.

The proposal must be organized in accordance with this section. Brevity is appreciated by the evaluation committee. Proposals may not exceed **18 pages**; font size should be 11 or 12. When using double sided printing, each side of the page is counted as one page. Proposals exceeding the specified number of pages in Section 1.7 may be deemed non-responsive.

3.2.1 Introductory Letter and Mandatory Statement of Qualifications (3 pages, 5 points; pass/fail)

Provide an overview of the Proposer's submittal, highlighting key points, understanding of important or critical issues and considerations and the approach to them, key personnel capabilities and expertise, and the experience that qualifies your firm to successfully complete the project.

- a. Describe any specialties or unique strengths your firm or team has that relate to the requested services and/or project.
- b. Discuss the unique or special benefits that your firm or team brings to the City and project.

- c. The name of the firm, as well as, the signature, printed name and title, telephone and fax number, and email address of the officer authorized to represent the Consultant in any correspondence, negotiations and sign any contracts that may result
- d. The address of the office that will be providing the service, a project manager's name, telephone number, fax number, and email address
- e. The Federal and State tax identification numbers, and the state of incorporation
- f. Indicate whether the proposer is a "Resident Bidder" as defined in ORS 279.120
- g. Provide a statement that the proposal is valid for sixty (60) days after the submission deadline

Every public contract that is subject to ORS 279C must include a representation and warranty from the consultant that consultant has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. The public contract must also require a covenant from the contractor to continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract and provide that a contractor's failure to comply with the tax laws of this state or a political subdivision of this state before the contractor executed the public contract or during the term of the public contract is a default for which a contracting agency may terminate the public contract and seek damages and other relief available under the terms of the public contract or under applicable law.

By signing the cover letter, Consultant certifies compliance with the tax laws of the State of Oregon or a political subdivision of the State of Oregon and provides a covenant to continue to comply with the tax laws of this state or a political subdivision of this state for duration of this contract.

3.2.2 Organizational Structure and Experience (8 pages, 40 points)

Provide a description of the proposer's organization and its history. An organizational chart (not included in page count) may be included.

Provide a list of three projects or contracts in which proposer provided (or continue to provide) hydrogeologic services similar to the tasks identified in the scope of work in Section 2.1. For each example, please provide:

- a. Client reference person including name, agency, phone number, and email address.
- b. Project costs (original and final)
- c. Project Duration

3.2.3 Project Management and Quality Control (3 pages, 20 points)

Provide a description of the proposing firm's approach to managing municipal projects.

Describe the approach and methodology of managing work tasks and coordination, sequence, and control of field and office operations to accomplish the work in a timely manner. Indicate how the firm ensures project progress and quality control, particularly amid changing conditions that may be encountered.

Mention how and to what extent the need for utilizing City personnel to assist the Consultant within the duration of the Project and indicate the approximate time requirement.

3.2.4 Project Team (4 pages, 30 points)

Provide an overview of the consultant's project team highlighting their experience, qualifications, and technical capacities that are relevant to the project.

Briefly describe the team's key personnel and their experience, qualifications, and roles on this project. Full detail of key staff should be provided in the appendix – resumes will be scored within this section.

- a. Provide a simple chart of the proposed project team structure.
- b. Describe your team's communication methods; provide an example of how this method provides benefit to the consultant team, and ultimately the City.
- c. Indicate the number of other projects that will be managed by the Project Manager during the time they would be assigned to the City's project.

Key Staff Resumes

Provide resumes for the Consultant team's key staff and team members. Each resume should not exceed two (2) pages and must show the years of experience, licenses, certifications, and relevant project experience.

3.2.5 Proposal Clarity (no pages, 5 points)

Proposers do not need to provide a written response to this criterion.

The proposal must be organized in accordance with the list of Scoring Criteria categories in Section 1.8. Proposals will be scored by evaluators on the following factors: Proposal format; ease of finding clear, concise responses that correlate with the order of evaluation criteria in this RFP; and proposers' attention to detail. Proposals should be prepared simply and economically. Special bindings, colored displays, promotional materials, etc., are not necessary. Emphasis should be on completeness, brevity, and clarity of content.

3.2.6 Interviews (no pages, 100 points)

Proposers do not need to provide a written response to this criterion.

- a. A minimum of three (3) evaluators shall score the interviews/follow-up questions.
- b. The interviews/follow-up questions will have a maximum score of 100 points.
- c. The number of Proposers selected for interviews/follow-up questions will be, to the greatest extent practicable, at least the two highest ranked Proposers based on Proposal scores.
- d. Follow-up questions will typically be sent via email to Proposer(s) as an alternative to face-to-face interviews. Proposers' responses to the follow-up questions must be received by the City via email by the deadline provided. However, City may conduct face-to-face or virtual interviews if determined necessary after conducting written follow-up questions.
- e. Interviews normally require physical attendance at City offices; however, the City may elect to conduct interviews virtually via teleconference or video conference. Further details will be included with notification of time and date of interviews.



RFP #2022-01

Mandatory Statement of Qualifications (SOQ) Form

Legal Business Name: _____

Form and State of Organization: _____

Registered dba, if applicable: _____

Main Office Address: _____

Telephone Number: _____

Email Address: _____

Tax Identification Number: _____

Representation, Covenant, and Warranty of Undersigned and Proposer

By signing this SOQ, the undersigned makes the following representations and warranties:

1. That they are the duly authorized representative of the proposer for all purposes relative to the submission of this SOQ.
2. That this SOQ constitutes the proposer's offer to enter into a contract with the City and, if accepted by the City, will be binding and enforceable against the proposer.

By causing this SOQ to be executed by the undersigned and delivered to the City, the proposer makes the following representations and warranties:

1. Proposer has read and understands the terms and conditions contained in the RFP, had the opportunity to protest any term or condition that it found unacceptable and to seek clarification of any term or condition that it does not understand, and it accepts and agrees to be bound by the terms and conditions of the RFP, including, but not limited to the contract conditions.
2. Proposer has not discriminated against minority, women, or emerging small business enterprises in obtaining any required subcontracts.
3. Proposer has not been listed by the Oregon Construction Contractor's Board (CCB) or the Oregon Department of Administrative Services (DAS) as a person disqualified or ineligible to bid on or perform work under public contracts.
4. Proposer agrees to meet all requirements contained in the RFP if it is selected to provide the services requested by this RFP.

Authorized Signature: _____

Print Name and Title: _____

Date of Signature: _____

**CITY OF SCAPPOOSE, OREGON
CONSULTING SERVICES AGREEMENT**

THIS AGREEMENT, made and entered into this ____ of _____, 2022, by and between the City of Scappoose, a municipal corporation, hereinafter referred to as the "City," and, _____ whose authorized representative is _____, and having a principal being a registered _____ in the State of Oregon, hereinafter referred to as the "Consultant."

RECITALS

WHEREAS, the City's Fiscal Year 2022-2023 budget provides for professional contractual services for the On-Call Hydrogeologic Services; and

WHEREAS, accomplishing the work and services described in this Agreement is necessary and essential to the program of the City; and

WHEREAS, the City desires to engage the Consultant to render professional consulting services for the project described in this Agreement, and the Consultant is willing and qualified to perform such services;

THEREFORE, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

1. Consultant's Scope of Services

The Consultant shall perform professional services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit ____, which is attached hereto and by this reference made a part of this Agreement.

2. Effective Date and Duration

This agreement shall become effective upon the date of execution and shall expire, unless both parties agree to a written extension, upon completion of the work or **June 30, 2027**, whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. Consultant's Fee

A. Basic Fee

1) As compensation for the contemplated Services described in Exhibit 1 of this Agreement, and for services required in the fulfillment of Paragraph 1, the Consultant shall be paid on an hourly rate based upon the "Schedule of Rates" in Exhibit 1 of this agreement, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly

provided in this Agreement. The Basic Fee shall not exceed the amount of _____ and _____ /100 Dollars (\$) without prior written authorization.

2) The Parties to this Agreement expressly agree that the Basic Fee is based upon the Scope of Services to be provided by the Consultant and is not necessarily related to the estimated construction cost of any project or duration of the services. In the event that the actual construction cost for projects designed by Consultant differs from the estimated construction cost, the Consultant's compensation will not be adjusted unless the Scope of Services to be provided by the Consultant changes and is authorized and accepted by the City.

B. Payment Schedule for Basic Fee

Payments shall be made upon receipt of billings based on the work completed. Billings shall be submitted by the Consultant periodically, but not more frequently than monthly. 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 Special Services

Prior to performing any services that are not contemplated under this Agreement, and the attached Exhibit ____, the Parties will agree to the scope in writing. The Consultant shall furnish the services based on the hourly rate schedule as described in Exhibit ____ of this contract for minor project additions and/or alterations, unless a separate payment rate or schedule is agreed upon and executed in writing.

D. Certified Cost Records

The Consultant shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the Consultant shall be subject to audit by the City. The Consultant shall complete work and cost records for all billings on such forms and in such manner as will be satisfactory to the City.

E. Contract Identification

The Consultant shall furnish to the City its employer identification number (EIN), as designated by the Internal Revenue Service, or social security number, as the City deems applicable.

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.

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) The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

5) 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.

6) 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 their surety from obligation with respect to any unpaid claims.

4. Ownership of Plans and Documents: Records

A. The field notes, design notes, and original drawings of the construction plans, as instruments of service, are and shall remain, the property of the Consultant. City shall have unlimited authority to use the materials received from the Consultant in any way the City deems necessary.

B. The City shall make copies, for the use of and without cost to the Consultant, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Consultant pursuant to this Agreement, and also make available any other maps, records, or other materials available to the City from any other public agency or body.

C. The Consultant shall furnish to the City, copies of all maps, records, field notes, and soil tests which were developed in the course of work for the City and for which compensation has been received by the Consultant at no additional expense to the City except as provided elsewhere in this Agreement.

5. Assignment/Delegation

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Consultant shall be fully responsible for the acts or omissions of any

subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation 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 be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.

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 contract are employees of Consultant and not of City. Consultant acknowledges that Consultant and individuals Consultant contracts with are not entitled to benefits that would be available to a City Employee. Consultant shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law.

C. The undersigned Consultant hereby 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 kind from the Consultant, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

D. If this payment is to be charged against Federal funds, Consultant certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his/her normal charge for the type of service provided.

E. Consultant and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

G. 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 contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of Consultant's profession under similar conditions and circumstances as well as the requirements of applicable

federal, state and local laws. Acceptance of 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 deficiencies, errors or omissions.

B. Claims for other than Professional Liability. Consultant agrees and shall indemnify, defend, save and hold harmless the City of Scappoose, its officers, employees, agents, and representatives from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, of whatsoever nature, including intentional acts resulting from or arising out of the activities of Consultant or its subcontractors, sub-consultants, agents or employees in performance of this contract at both trial and appeal level, whether or not a trial or appeal ever takes place including any hearing before federal or state administrative agencies. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

C. Claims for Professional Liability. Consultant agrees and shall indemnify, defend, save and hold harmless the City of Scappoose, its officers, employees, agents, and representatives from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, arising out of the professional negligent acts, errors or omissions of Consultant or its subcontractors, sub RFP consultants, agents or employees in performance of professional services under this agreement. Any work by Consultant that results in a design of a facility that is not readily accessible to and usable by individuals 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 in performance of this contract. 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 in performance of this contract.

8. Insurance

Consultant and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover risks arising directly or indirectly out of Consultant's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder. 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

Consultant shall obtain, at Consultant's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (CG 2010 1185 or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

Coverage	Limit
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Fire Damage	\$50,000

B. Professional Liability

Consultant shall obtain, at Consultant's expense, and keep in effect during the term of this contract, 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 \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$3,000,000 and filed on a "claims-made" form.

C. Commercial Automobile Insurance

Consultant shall also obtain, at Consultant's expense, and keep in effect during the term of the contract (Symbol 1 or Symbols 8 and 9 as applicable) 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 \$2,000,000. If Contractor operates a personally-owned vehicle for business use under this contract, the Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the contract, business automobile liability coverage for all owned vehicles on an "occurrence" form. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

D. Workers' Compensation Insurance

The Consultant, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage 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. This shall include Employer's Liability Insurance with coverage limits of not less than \$1,000,000 each accident.

E. Additional Insured Provision

All policies aforementioned, other than Workers' Compensation and Professional Liability, shall include the City its officers, employees, agents and representatives as additional insureds with respect to this contract. Coverage will be endorsed to provide a "per project" aggregate.

F. Extended Reporting Coverage

If any of the aforementioned liability insurance is arranged on a "claims-made" basis, Extended Reporting coverage will be required at the completion of this contract to a duration of 24 months or the maximum time period the Consultant's insurer will provide such 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 contract 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 contract. 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. All policies of insurance must be written by companies having an A.M. Best rating of "A-VII" or better, or equivalent. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

I. Self-Insurance

The City understands that some Contractors may self-insure for business risks and the City will consider whether such self-insurance is acceptable if it meets the minimum insurance requirements for the type of coverage required. If the Contractor is self-insured for commercial general liability or automobile liability insurance the Contractor must provide evidence of such self-insurance. The Contractor must provide a Certificate of Insurance showing evidence of the coverage amounts on a form acceptable to the City. The City reserves the right in its sole discretion to determine whether self-insurance is adequate.

J. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Consultant shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required Certificates of Insurance have been received and approved by the City. The

certificate will specify and document all provisions within this contract and include a copy of Additional Insured Endorsement. A renewal certificate will be sent to the address below prior to coverage expiration.

K. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

L. 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.

L. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability and commercial automobile policies required by this contract.

A certificate in form satisfactory to the City certifying to the issuance of such insurance will be forwarded to:

City of Scappoose
Attn: City Manager
33568 E Columbia Ave
Scappoose, Oregon 97056

Such policies or certificates must be delivered prior to commencement of the work. The procuring of such required insurance shall not be construed to limit Consultant's liability hereunder. Notwithstanding said insurance, Consultant shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

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 contract pursuant to this paragraph, it shall pay Consultant for services rendered to the date of termination.

10. 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.

11. Method and Place of Giving Notice, Submitting Bills and Making Payments

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:

CITY OF SCAPPOOSE

Finance Department

Email:

Phone: 503.543.7146

Fax: 503.543.5679

Address: 33568 E Columbia Ave
Scappoose, OR 97056

Dave Sukau

Public Works Director

Email: dsukau@cityofscappoose.org

Phone: 503.543.8404

Address: 33568 E Columbia Ave
Scappoose, OR 97056

<CONSULTANT>

Email:

Phone:

Fax:

Address:

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

12. 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.

13. Professional Services

The City requires that services provided pursuant to this agreement shall be provided to the City by a Consultant, which does not represent clients with applications in the City. If Consultant represents Clients in other jurisdictions that have business in the City, Consultant needs to inform the City of that representation within seven (7) business days.

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 disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, pandemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled 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 civil rights and rehabilitation statutes, rules, and regulations. Consultant also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, 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 (Changes)

Only the City's Project Manager may authorize extra (and/or change) work. Failure of Consultant to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work. Changes or additions of work shall only be authorized in writing.

18. Governing Law

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the Columbia County Circuit Court, State of 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 those set forth in ORS 279A, 279B, and 279C.

20. Conflict Between Terms

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

21. Access to Records

City shall have access to such books, documents, papers and records of Consultant as 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 contract period. Consultant agrees to permit City, the State of Oregon, the federal government, or their 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. Representations and Warranties

Consultant represents and warrants to the City that:

A. Consultant has the power and authority to enter into and perform this Agreement.

B. This Agreement, when executed and delivered, is a valid and binding obligation of Consultant, enforceable in accordance with its terms.

C. Consultant (to the best of Consultant's knowledge, after due inquiry), for a period of no fewer than six calendar years (or since the firm's inception if less than that) preceding the effective date of this Agreement, faithfully has complied with:

1) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

2) Any tax provisions imposed by a political subdivision of this state that applied to Consultant, to Consultant's property, operations, receipts, or income, or to Consultant's performance of or compensation for any work performed by Consultant;

3) Any tax provisions imposed by a political subdivision of this state that applied to Consultant, or to goods, services, or property, whether tangible or intangible, provided by Consultant; and

4) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

D. Any intellectual property rights or such delivered to the City under this Agreement, and Consultant's services rendered in the performance of Consultant's obligations under this Agreement, shall be provided to the City free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

25. Compliance with Tax Laws

A. Consultant must, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of the State of Oregon. For the purposes of this Section, "tax laws" includes all the provisions described in subsection 24.C. 1) through 4) of this Agreement.

B. Any violation of subsection A of this section shall constitute a material breach of this Agreement. Further, any violation of Consultant's warranty, in subsection 24.C of this Agreement, that the Consultant has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle the City to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

- 1)** Termination of this Agreement, in whole or in part;
- 2)** Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Consultant, in an amount equal to State's setoff right, without penalty; and
- 3)** Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The City shall be entitled to recover any and all damages suffered as the result of Consultant's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing a replacement Consultant. These remedies are cumulative to the extent the remedies are not inconsistent, and the City may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

26. Complete Agreement

This Agreement, including the exhibits, is intended both as a final expression of the Agreement between the Parties and as a complete and exclusive statement of the terms. In the event of an inconsistency between a provision in the main body of the Agreement and a provision in the Exhibits, the provision in the main body of the Agreement shall control. In the event of an inconsistency between Exhibit A. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such 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. Consultant, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Consultant has executed this Agreement on the date hereinabove first written. Contract was awarded by Scappoose's Local Contract Review Board at their meeting on _____.

CONTRACTOR

CITY OF SCAPPOOSE

By: _____
(signature)

By: _____
(signature)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address:

Federal Employer ID Number