

CITY OF BEND
PROPOSAL SOLICITATION
APPRAISAL SERVICES FOR THE BEND MUNICIPAL AIRPORT
SOLICITATION NO. 25-41905

The City of Bend is requesting proposals from qualified appraisal firms to provide a real property appraisal report (Appraisal /Project) for the Bend Municipal Airport (Airport/Property). The Appraisal Report shall determine fair market value (FMV) for leased property at the Airport and will be used to establish rent rates effective July 1st, 2025, in accordance with the City's rental fee structure. Details of the requested work are included in the Scope of Work, **Exhibit A**.

General Airport Information

Located on approximately 420 acres, five miles northeast of Bend, Oregon, at 63132 Powell Butte Hwy, Bend, Oregon, 97701, the Airport is classified by the Oregon Department of Aviation as a Category 2, High Activity Business and General Aviation airport. Based on the number of takeoffs and landings, the Airport is considered the third busiest airport in Oregon.

Airport Facilities & Development.

The Airport contains:

- a single 5,260-foot runway with dual, full-length parallel taxiways
- an FBO building with pilot's lounge, paved ramp area, and attendant vehicle parking area
- a Fuel Farm
- a café at the FBO building
- an 8-acre Helicopter Operations Area ("HOA") with an additional 500,000 square feet of developable land for dedicated rotor wing operators and service companies
- a future Air Traffic Control Tower (currently under development with an anticipated completion date of December 2025)
- 5 box hangars, 66 T-hangars, 6 hangar storage areas, all of which are City-owned and leased (totaling 139,000 square feet of leased space)
- 58,000 square feet of lease space for plane and vehicle parking
- 2.8 million square feet of leased ground space (developed with privately owned hangars)
- 2.6 million square feet of leasable ground space

In addition to the facilities noted above, the Airport is home to numerous aviation-related businesses. Additional information about the Airport can be found on the City's Airport Website at: <https://www.bendoregon.gov/government/departments/economic-development/bend-airport>

Proposal Contents

- 1. Letter of Transmittal.** Provide a letter stating the firm's interest, qualifications in land and airport appraisals, certifications and experience with similar engagements. Please indicate in the letter if your firm can meet the contract terms found in Exhibit B. Any deviations to the contract terms will not be considered after Proposal's are submitted.
- 2. Project Understanding & Approach.** Include a description of understanding and the proposed approach to the Project and information, including personnel and resources that will be available to address the full range of required services for the Project.

3. **Specialized Experience.** Provide a description of the firm’s experience with “Land Appraisal Guidelines” of the Code of Federal Regulations in the appraisal of airports or similar projects.
4. **References/Experience.** Provide project descriptions for up to two (2) recent projects similar in nature to the proposed Project, including completion dates, measures that indicate quality and successful Project completion, and a client reference name and phone number. Indicate the involvement of proposed key staff on those or similar Projects. Include a brief description of the scope of work performed.
5. **Project Team.** Include only key personnel that will work on the Project and whether they are a current employee of the Appraiser or a hired independent consultant. Refer to Section 7, Scope of Work, for Appraiser Qualifications. Provide a staff breakdown and detailed resumes of key project personnel proposed to be assigned to this appraisal project, including each staff member’s tenure with the Appraiser and current licensure information and credentials. Identify the responsible land appraiser for this project and provide a point of contact. Similar information shall be provided for project consultants to be used on the Project. Include resumes of staff, limited to four (4) pages.
6. **Cost Proposal.** Provide a detailed tabulation of the cost of services in a “not-to-exceed” amount, including labor hours, hourly rates, total costs for all reimbursable expenses, and a schedule of rates and charges. Note: The proposed cost of services must be a bona fide amount reflecting costs normally associated with a land appraisal. The cost proposal shall be based on the Scope of Work and shall include any estimated expenses. Clearly describe any deviation from the Scope of Work that would significantly affect costs. Separate the cost of any “proposed optional services” from the cost of services requested in the Scope of Work.

Limitations:

- Sections 1-4- limited to a total of twelve (12) pages of text, including the letter of transmittal.
- Section 5- limited to four (4) pages.
- Section 6- no limit.
- Pages beyond these page limitations will not be evaluated.

Proposal Evaluation Criteria and Scoring

The City will select the Appraiser which it judges to have the best combination of qualifications, experience, personnel, project understanding, technical and administrative capabilities, and cost of service. The City will award the contract for the Airport land appraisal services that it considers to be in its best interests.

Governing Laws

This procurement and any resulting contract are governed by Oregon Law (ORS 279A and 279B), City of Bend Code, the Uniform Standards of Professional Appraisal Practice (USPAP) and Federal Aviation Administration (FAA) Appraisal Standards.

Issuing Officer

The Property & Lease Manager with the City of Bend Real Estate & Facilities Department is the Issuing Officer for this Proposal Solicitation request and is the point of contact for the City for all process and contract questions as well as protests.

City of Bend
Real Estate Department
Attn. Laura Bishop – Property & Lease Manager
710 NW Wall Street
P.O. Box 1458
Bend, Oregon 97703
Email: lbishop@bendoregon.gov
Phone: (208) 936-0242

Questions

Any questions including technical questions must be directed to the Issuing Officer and are encouraged to be submitted via email at realestate@bendoregon.gov. Please ensure the email heading includes the title: **Airport Appraisal – Proposal Solicitation**. City must receive all questions and requests for changes, in writing, no later than **Friday, November 8, 2024 at 4:00 p.m. Pacific Standard Time**. The City's written response to Questions and/or Requests for Clarification will be distributed via email to known interested parties and posted to the City of Bend Real Estate webpage, www.bendoregon.gov/real-estate, by **Friday, November 15, 2024 at 4:00 p.m Pacific Standard Time**. Responses to questions received less than five business days prior to the deadline for submitting Proposals will be at the discretion of the City. Please contact the Issuing Officer for accessibility options.

Submission

The deadline for submitting proposals is **Thursday, November 21, 2024 at 4:00 p.m. Pacific Standard Time**. Proposals should be submitted in electronic form to realestate@bendoregon.gov. If technical assistance is needed, please contact the Issuing Officer. Proposals may also be submitted to the City, via mail, or in person, by contacting the Issuing Officer no later than two (2) business days prior to Proposal due date to make arrangements ahead of time for an in-person submission. Hard copies will not be accepted unless the Proposer has made arrangements ahead of time. If a hard copy of the Proposal is submitted without prior coordination with the Issuing Officer, the Proposal will be returned (unopened) to the Proposer without consideration.

Proposals received after the specified date and time will not be given further consideration. The City reserves the right, at its sole discretion, to accept responses to this Proposal Solicitation that it deems insubstantially deficient. Proposers are encouraged to allow extra time to ensure proposals are received by the deadline as this can be impacted by Proposer's bandwidth speed.

Rejection

The City may reject any proposal not in compliance with one or more of the provisions established in this Proposal Solicitation and may reject for good cause any or all proposals upon a finding of the City that it is in the public interest to do so.

Modification or Withdrawal of Proposal

A proposal may not be modified, withdrawn, or cancelled by the Respondent for fourteen (14) calendar days following the time and date designated for the submission/receipt of proposals. Proposals submitted early may be modified or withdrawn only by notice to the Issuing Officer, prior to the time and date designated for the submission/receipt of proposals. Withdrawn proposals may be resubmitted up to the time and date designated for the submission/receipt of proposals.

EXHIBIT A
SCOPE OF WORK

1.1 The purpose of the appraisal requested under this Proposal Solicitation is to determine the fair market value (FMV) of rental rates for leaseholds on the City of Bend Municipal Airport property (Airport/Property). The FMV rental rates will be used to establish new rent rates that are consistent with market conditions, pursuant to the City’s rental fee structure, under which all lease rent rates are adjusted to a FMV rent rate every five years. Based on the Appraisal findings, the City will adjust Airport rent rates effective July 1, 2025.

1.2 Property to be appraised includes all existing leaseholds and leasable property at the Airport, comprised of ground parcels, as well as improvements thereon. The Property is used for aeronautical, non-aeronautical, commercial, and non-commercial purposes.

2. OBJECTIVES

2.1 Determine a FMV rent value, to be effective July 1st, 2025, for all City leaseholds (City Leaseholds) and leasable/developable portions of the Property. City Leaseholds include the following types of leases:

- 2.1.1 Ground Lease
- 2.1.2 Box Hangar Lease
- 2.1.3 T-Hangar Lease
- 2.1.4 Storage Space Lease
- 2.1.5 Apron Area
- 2.1.6 Setback Area
- 2.1.7 Parking Area
- 2.1.8 Fixed Base Operator (“FBO”) Area
- 2.1.9 Tie-Down Space
- 2.1.10 Office Space
- 2.1.11 Cafe’ Space
- 2.1.12 Ramp Area
- 2.1.13 Parking Pad
- 2.1.14 Designated Fuel Area

2.2 Prior to January 17, 2024, conduct a comprehensive visual/physical inspection of the 420-acre Airport Property and all improvements, to include exterior and interior components, as necessary, to document Property and City Leasehold characteristics and capture necessary photos/visual images, create Property and City Leasehold descriptions, and note the condition of improvements on the Property prior to winter snowfall.

2.3 Provide an adequate description of the physical characteristics of the Airport Property, as well as each City Leasehold type (“Leasehold Type”) thereon. For each Leasehold Type, the Appraisal Report shall provide the location, zoning, present use, condition of improvements, and an analysis of highest and best use.

2.4 Provide a complete Appraisal and Appraisal Report in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) and Federal Aviation Administration (“FAA”) Appraisal Standards.

3. REQUIREMENTS

3.1 Market Rent Analysis. It is expected that the market rent analysis will incorporate an investigation of all pertinent data relating to the Property, including, but not limited to:

3.1.1 Trends in the General Aviation industry at western regional, statewide and local levels

3.1.2 Criteria used in classification of airports by both the FAA and the state of Oregon

3.1.3 The City’s standard aviation leases for the purpose of understanding the use restrictions and both lessor and lessee obligations as they would apply to the subject leaseholds

3.1.4 Onsite Airport amenities

3.1.5 Geographic area

3.1.6 Personal inspection of the Property

3.1.7 Research of market conditions.

3.2 State the identity of the client and the intended audience of the Appraisal Report.

3.3 State the purpose of the Appraisal and the date of the Appraisal Report.

3.4 Describe the information sufficiently to identify the real property involved in the Appraisal, including the physical and economic property characteristics relevant to the assignment.

3.5 Describe sufficient information to disclose to the City and any intended audience of the Appraisal the process followed to develop the Appraisal and Appraisal Report.

3.6 State all assumptions, hypothetical conditions and limiting conditions that affected the analyses, opinions and conclusions.

3.7 State the use of the Property existing as of the date of value and the use of the Property reflected in the Appraisal; and, when the purpose of the assignment is market value,

describe the support and rationale for the appraiser's opinion of the highest and best use of the Property.

3.8 State and explain any permitted departures from specific requirements of USPAP STANDARD 1, and the reason for excluding any of the usual valuation approaches.

3.9 Include a signed certification in accordance with USPAP Standards Rule 2-3.

3.10 The report should be in a professional format with section tabs clearly identifying all sections and specific valuations.

4. DELIVERABLES

4.1 An Appraisal Report including:

4.1.1 Description of the Property. Include photos, dimensions, site plans, and/or any supporting documents to accurately describe the Airport Property, as necessary.

4.1.2 Description of the Leasehold Types on the Property, to include a description of the improvements on each Leasehold. Include photos, dimensions, site plans, and/or any supporting documents to accurately describe the Leasehold Types, as necessary.

4.1.3 Market analysis on opinions of fair market lease rate value, in dollars per square foot, for annual and monthly lease rates.

4.1.4 Description of the appraisal process and report documentation standards for establishing fair market lease rate values for all Airport Leasehold Types, as identified in Section 2.1, above.

4.1.5 Fair market lease rate per net and gross square foot for all Airport Leasehold Types, as identified in Section 2.1, above.

4.2 All requirements stated within the Scope of Work.

5. SCHEDULE

5.1 Select Appraiser by: Friday, December 6, 2024

5.2 Effective Date of Services Contract: Monday, December 9, 2024

5.2 Project Deliverables and Due Dates:

Project Deliverable	Summary of Tasks	Due Date
Physical Inspection of Property & Leaseholds	Initial physical inspection of the Property and all Leaseholds, to include gathering site information, data, and photos	1/17/2025
Appraisal Report – FINAL	Final Appraisal Report as discussed in the Proposal and Scope of Work, and which meets all requirements therein	3/31/2025

5.3 Termination Date of Services Contract: July 31, 2025

6. DEFINITIONS

6.1 Ground Lease. Ground available for new and existing development.

6.2 Ramp Area. Designated paved area used for parking, operation, maintenance, and service of rotor wing and/or fixed wing aircraft.

6.3 Parking Pad. Designated individual space of Ramp Area used for parking of fixed wing and/or rotor aircraft storage.

6.4 Improvements. Anything added to the ground.

6.5 Intended Purpose. The intended purpose of this Appraisal is to provide an appraised current fair market rental rate and applicable range of fair market rental rates for the Property and all Leasehold Types to assist the City in updating its rental fee structure to establish fair market rents for Airport leaseholds effective July 1, 2025. Ultimately, the City seeks to establish a rental fee structure for the leasable land at the airport that is consistent with market land values for similar airports, uses, and lease types and to ensure the airport as financially self-sustaining as possible.

6.6 Intended Audience. The intended audience of this appraisal report is the city of Bend, Oregon, Bend Municipal Airport (Sponsor) and the FAA. The Sponsor and the FAA will rely on the appraisal and appraisal report to document the current fair market value and/or fair market rental rate of each leased property, as applicable.

7. APPRAISER QUALIFICATIONS

The Appraiser must:

7.1 Be licensed by the State of Oregon licensing Board as a State-Certified General Appraiser in good standing with the State of Oregon Department of Labor & Regulation.

7.2 Be a member of the Appraisal Institute with a member Appraisal Institute (“MAI”) designation.

7.3 Have a working knowledge of the aviation industry including FBOs, hangars, aviation support facilities, airport commercial development, and related general aviation facilities and associated aeronautical activities and be familiar with Federal Aviation Administration (“FAA”), State of Oregon, and City of Bend and Deschutes County regulations, rules and policies affecting airport property, to include the updated Bend Municipal Airport Rules and Regulations.

7.4 Not have any outstanding litigation or regulatory issues that may materially affect its ability to provide the Scope of Services.

7.5 Not have any conflict of interest, direct or indirect, in the Property being appraised that would in any way conflict with the preparation of the Appraisal and Appraisal Report.

7.6 The appraiser must understand the methods needed to develop credible fair market lease rates, understand the relevant real estate markets for similar types of airports and uses, and the intended use of the Appraisal Report.

7.7 State the appraisers’ qualifications with respect to the work to be performed and identify any specific work experience in providing valuation of land and buildings located on an airport.

EXHIBIT B



CITY OF BEND

**PERSONAL SERVICES AGREEMENT BETWEEN
THE CITY OF BEND AND**

Contract Number:

This Personal Services Agreement is between the City of Bend, Oregon ("City") and _____ ("Contractor") (together, "Parties") for professional personal services.

RECITALS

- A. The City desires to enter into the Agreement for airport appraisal services.
- B. Contractor has the training, ability, knowledge, and experience to provide the services desired by the City.
- C. Contractor was selected by an informal request for proposal process.

TERMS OF AGREEMENT

1. **Effective Date; Duration.** This Agreement shall become effective when signed by both Parties and approved by the City's legal counsel. Unless sooner terminated, this Agreement shall expire on July 31, 2025. Termination or expiration shall not extinguish or prejudice the City's right to enforce this Agreement with respect to any default or defect in performance that has not been cured.
2. **Services.** Contractor shall airport appraisal services for the Bend Municipal Airport. The services to be provided are described in more detail in Exhibit A, Scope of Work. Contractor shall perform all work in accordance with Exhibit A.
3. **Consideration.** City shall pay Contractor as set out in Exhibit ____, but the total payment under this Agreement, which includes allowable expenses for reimbursement as per the attached Exhibit ____, **shall not exceed \$_____**. The Not to Exceed amount may be exceeded only upon prior written increase in the Scope of Work, accompanied by written authorization for an increase in fee from the City Manager. If there is no change in Scope of Work, the Contractor shall complete all identified Work Scope within the Not to Exceed amount as indicated above. Any known additional or optional tasks are listed in Exhibit ____.

- 3.1. Contractor shall send City an invoice each month setting forth the fee due for that month and include a detailed summary of the work performed during the pay period. City shall review all submitted invoices promptly and shall pay all undisputed amounts within 30 days of City's receipt of the invoice.
- 3.2. Invoices will be directed to the City of Bend, Attention: Accounts Payable, P.O. Box 1458, Bend, Oregon 97709. Invoices may be emailed to: ap@bendoregon.gov. If an invoice is delivered on a non-business day, the invoice shall be considered received on the next day the City's Finance Department is open for business.
- 3.3. Contractor shall reference the Contract Number and the Project Number as appropriate.
- 3.4. All prices shall be protected from increase for Year 1 of the Contract. Any notice of an increase in the fees shall be given to the City at least sixty (60) days prior to an anniversary date of this Contract. The adjustment is limited to the lesser of the increase in Contractor's published rates charged to all clients for services similar to those Services described in this Contract, or the increase in the Consumer Price Index (CPI) (All Urban Consumers), West – Size Class B/C as of the anniversary date over the index prior to the commencement date of this Contract. The change is subject to review and acceptance by the City of Bend via contract amendment prior to performance of work at new rates.

4. **Standard of Care.** Contractor will provide services with the degree of skill and diligence normally employed by professionals performing the same or similar services at the time the services are performed. Contractor shall, at all times during the term of this Agreement, be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work, be duly qualified and competent.

5. **Termination.** The Parties may terminate this Agreement as follows:

- 5.1. This Agreement may be terminated at any time by mutual consent of both Parties.
- 5.2. City may, at its sole discretion, terminate this Agreement, in whole or in part, upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
- 5.3. City may terminate this Agreement, effective upon delivery of written notice to the Contractor, or at a later date established by the City under any of the following conditions:
 - (a) City funding is not obtained or continued at levels sufficient to pay for Contractor's Work. The Agreement may be modified to accommodate a reduction in funds. In determining the availability of funds, City may use the biennial budget adopted or modified by the City Council.

- (b) If federal, state, or City regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
 - (c) If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 5.4. Any termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to the termination.
- 5.5. The City by written notice of default (including breach of contract) to the Contractor may terminate the whole or any part of this Agreement:
 - (a) If the Contractor fails to provide services called for by this Agreement within the time specified or any extension of the Agreement, or
 - (b) If the Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from the City, fails to correct the failures within 10 days or such longer period as the City may authorize.
- 5.6. Contractor may terminate this Agreement upon 30 days' written notice to City if City fails to pay Contractor pursuant to the terms of this Agreement and City fails to cure within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in the notice.

6. **Access to Records – Files; Confidential Information.** Contractor shall maintain all books, documents, papers, and records relating to the Agreement for at least seven years following completion of the project. Contractor shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance. City, state, and federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcript. Contractor agrees that all files or other documents generated or in the possession of Contractor related to Contractor's delivery of service are the property of the City and shall be available to the City upon request. Contractor understands the nature of project/projects means that Contractor may be privy to information that is confidential, proprietary, or sensitive in nature, which information shall not be disclosed to any third person or entity without the consent of the City of Bend or at the City's direction, either during the term of this Agreement or after its termination. Likewise, any analysis or commentary provided by Contractor of a confidential or sensitive nature shall not be released or disclosed to any person without the consent or direction of the City.

7. **Independent Contractor; Responsibility for Taxes & Withholding.**

- 7.1. The Work to be rendered under this Agreement is that of an independent contractor. Contractor is not an officer, employee, or agent of the State or Department as those terms are used in ORS 30.265 of the Oregon Tort Claims Act, and Contractor is not to be considered an officer, employee, or agent of the City for any purpose. Contractor shall be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Agreement. Contractor is an independent contractor for purposes of the Oregon Workers' Compensation Law (ORS Chapter 656) and is solely liable for workers' compensation coverage under this Agreement. City does not have the right of direction or control of the manner in which Contractor delivers the Work under this Agreement or exercise any control over the activities of the Contractor.
- 7.2. No Agency, Partnership, or Joint Venture/Independent Contractor - Neither the City or Contractor, by virtue of this Agreement, is a partner or joint venture with the other party in connection with the activities carried out under this Agreement.
- 7.3. This Agreement is not intended to entitle the Contractor nor any of its Agents to any benefits generally granted to City employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Agreement are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement. Contractor shall be responsible for all federal or state taxes applicable to compensation or payment paid to Contractor under this Agreement.

8. **Ownership of Work Product.** All work product of Contractor under this Agreement shall be the exclusive property of the City. Contractor waives and releases all rights relating to the use of the work under this Agreement, including any rights arising under 17 U.S.C. § 106A. Reuse of work product by City or others for purposes outside the Scope of Work shall be without liability to Contractor.

9. **Indemnification.** Contractor shall defend, indemnify, and hold the City, its officers, agents, employees, and volunteers harmless against all liability, claims, losses, demands, suits, fees, and judgments (collectively known as 'claims') that may be based on, or arise out of damage or injury (including death) to persons or property caused by or resulting from any act or omission sustained in connection with the performance of this Agreement or by conditions created thereby or based upon violation of any statute, ordinance, or regulation. This indemnification required shall not apply to claims caused by the sole negligence or willful misconduct of the City, its officers, agents, employees, and volunteers. The Contractor agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

10. **Insurance.** Contractor shall purchase and maintain at their own expense the insurance noted below subject to review and acceptance by the City of Bend. All insurance shall apply on a

primary, non-contributory basis and remain in effect for the duration of the Agreement terms. Any policy written on a 'claims made' basis may only be done so with the written approval and authorization of the City of Bend and coverage written in this manner shall extend for 24 months past completion and acceptance of Contractor's work or services. Insurance certificates and insurance questions shall be emailed to the City's insurance email at: insurance@bendoregon.gov.

- 10.1 Commercial General Liability Insurance with minimum coverage in effect of \$2,000,000 per incident, claim or occurrence and \$2,000,000 in aggregate. The policy shall include coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products completed operations, employer's practices liability, and contractual damages. Contractor shall remain fully responsible and liable for any claims resulting from the negligence or intentional misconduct of Contractor, its subcontractors, and their officials, agents, and employees in performance of this Agreement, even if not covered by, or in excess of insurance limits.
- 10.2 Commercial Automobile (Fleet) Liability Insurance with minimum combined single limit of \$2,000,000 covering all owned, non-owned, and hired vehicles. This coverage shall be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability and Commercial General Liability.
- 10.3 Contractor shall maintain in full force and effect professional liability insurance with a combined single limit of not less than \$2,000,000 for each claim, incident, or occurrence, \$2,000,000 aggregate. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this Agreement. Contractor shall remain fully liable for any deductible required under its professional liability errors and omissions policy if found to be negligent related to the professional services to be provided under this Agreement. Coverage must be in effect prior to the commencement of the performance of this Agreement. Contractor shall furnish proof of continuous "tail" coverage for 24 months after Agreement completion.
- 10.4 Commercial General Liability coverage shall name, by certificate and endorsement the City, its officers, agents, employees, and volunteers as additional insureds with respect to Contractor's work or services provided under this Agreement.
- 10.5 Workers' Compensation Insurance as required by ORS chapter 656 and meeting the minimum requirements therein. Contractor shall ensure that each subcontractor obtains and maintains workers' compensation insurance and that the carrier notifies the State of Oregon or files a guaranty contract with the State of Oregon Workers' Compensation Division before performing work.
- 10.6 Contractor shall provide proof of coverage required by acceptable Certificate of Insurance and signed Endorsement from the carrier(s). The Certificate and

Endorsement shall provide that there will be no cancellation, termination, material change, or reduction in limits of the insurance coverage without a minimum 30-day written notice to the City. The Certificate and Endorsement shall also state the deductible or self-insured retention level.

11. **Subrogation.** Contractor grants Waiver of Subrogation to the City, its officers, agents, employees, and volunteers for any claims arising out of Contractor's work or service. Further, Contractor agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery by the Contractor shall be solely with their insurance carrier. Contractor also grants to City on behalf of any insurer providing coverage to either Contractor or City with respect to the work or services of Contractor a waiver of any right to subrogation which any insurer or Contractor may acquire against City by virtue of the payment of any loss under such insurance coverage.

12. **Nondiscrimination - ADA Compliance** – Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Contractor also shall comply with the Americans with Disabilities Act (ADA) of 1990, as amended by the ADA Amendments Act (ADAAA) of 2008 and any subsequent amendments (42 U.S.C. § 12101, et seq.) (Pub No. 101-336), ORS 659A, and all regulations and administrative rules established pursuant to those laws. Contractor agrees to comply with ADA in its employment and nondiscrimination practices, and that it shall perform its contractual obligations consistent with ADA federal requirements/regulations, state disability and accessibility law and requirements, and applicable regulations and administrative rules established pursuant to those laws.

13. **Successors and Assigns.** City and Contractor each binds itself, its successors, assigns, and legal representatives to the other party to this Agreement and to the successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Contractor shall not assign or transfer its interests in this Agreement without written consent of City, which consent may be withheld in the City's sole, subjective discretion. The rights under this Agreement may not be transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. The City may rescind this Agreement if transferred or assigned by operation of law, change of control or merger, or without the prior written consent of the City.

14. **Force Majeure.** Contractor shall not be held responsible for delay or default caused by fire, riot, acts of God, and war which is beyond Contractor's reasonable control. 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 the Agreement.

15. **No Third Party Beneficiaries.** City and Contractor are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

16. **Waiver.** City's failure to enforce a provision of this Agreement shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of this Agreement.

17. **Limitation on Authority.** City retains its authority to execute all applications, Agreements, and other documents relating to the Project. Contractor has no right or authority, express or implied, to commit or otherwise obligate City or any of its partners, except as permitted by the express terms of this Agreement, or as authorized in writing.

18. **Attorney Fees & Governing Law.** In the event an action, suit of proceeding, including appeals, is brought for failure to observe any of the terms of this Agreement, each party shall be responsible for that party's own attorney fees, expenses, costs, and disbursements for the action, suit, proceeding, or appeal. The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any claim, action, suit, or proceeding between City and Contractor arising from or relating to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Contractor hereby consents to *in personam* jurisdiction of said courts.

19. **ORS 279A.125 Preference for Recycled Materials.** Contractor will use where applicable, recycled materials if (a) The recycled product is available; (b) The recycled product meets applicable standards; (c) The recycled product can be substituted for a comparable non-recycled product; and (d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent (5%).

20. **Compliance with Law.** Contractor shall comply with applicable federal, state, and local laws and ordinances applicable to the work under this Agreement. This Agreement incorporates the provisions required to be in an agreement of this type by ORS 279B.200 through 279B.235 (see Exhibit ____).

21. **Merger Clause.** This Agreement and attached exhibits constitute the entire Agreement between the Parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties. The waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor by signature of its authorized representative hereby acknowledges that he/she/they has read this Agreement/Agreement/Agreement, understands it, and agrees to be bound by its terms and conditions.

22. **Key Personnel.** Contractor acknowledges and agrees that the City selected Contractor for award of this Contract because of the special qualifications of Contractor's key personnel. Contractor shall not reassign or transfer key personnel to other duties or positions such that they are no longer available to provide City with the expertise, experience, judgment, and personal attention at the level proposed without first obtaining the City's prior written consent to such reassignment or transfer. The

City shall have the right to interview, review the qualifications of, and approve or disapprove any proposed change in key personnel.

23. **Notices.** Project correspondence shall be directed to City Project Manager. Insurance certificates and insurance questions shall be emailed to the City's insurance email at: insurance@bendoregon.gov. All notices and demands of a legal nature that either party may be required or may desire to serve upon the other party shall be in writing and shall be served upon the other party by personal service, by facsimile transmission, E-Mail followed by mail delivery of the original of the notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

Contractor Name

Attn:

[Address]

[City, State, Zip]

Phone:

Email:

City of Bend

Attn: Real Estate

710 NW Wall Street

Bend, Oregon 97703

Phone: 541-388-5505 Fax: 541-385-6676

Email: realestate@bendoregon.gov

With a copy to:

City of Bend

Attn: City Attorney

710 NW Wall Street

Bend, Oregon 97703

Phone: 541-388-5505 Fax: 541-385-6676

Email: legalnotice@bendoregon.gov

Service by mail shall be deemed complete on the date of actual delivery or three business days after being sent via certified mail. Service by facsimile transmission or E-Mail shall be deemed served upon receipt of the facsimile or E-Mail, followed by mail delivery.

24. **Severability.** If any provision of this Agreement is held illegal or unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions will not be impaired unless the illegal or unenforceable provision affects a significant right or responsibility, in which case the adversely affected party may request renegotiation of the Agreement, and if negotiations fail, may terminate the Agreement.

25. **Counterparts.** This Agreement 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 Agreement so executed shall constitute an original.

26. **Amendments.** The Parties may amend this Agreement by a written amendment properly executed by both Parties.

27. **Pay Equity.** As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and shall not discriminate against any of Contractor’s employees in the payment of wages or other compensation for work of comparable character, the performance of which requires comparable skills, or pay any employee at a rate less than another for comparable work, based on an employee’s membership in a protected class.

Contractor must comply with ORS 652.220 as amended and shall not unlawfully discriminate against any of Contractor’s employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. Contractor’s compliance with this section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles Agency to terminate this Contract for cause.

Contractor may not prohibit any of Contractor’s employees from discussing the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person.

28. **Compliance with Tax Laws.** Contractor represents and warrants that Contractor has complied with the tax laws of this state and political subdivisions of this state including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318.

Contractor agrees to continue to comply with the tax laws of this state and political subdivisions of this state during the term of this Agreement. Failure of the Contractor to comply with the tax laws of this state or a political subdivision of this state before the Contractor executes the Agreement or during the term of the Agreement, shall be considered a default for which the City may terminate the Agreement and seek damages and other relief available under this Agreement

CITY OF BEND, OREGON

Matt Stuart, Real Estate Director

Date

CONTRACTOR

Name and Title:

Date

City Contracting & Funding Authorizations:

By: _____
Laura Bishop, Project Manager
City of Bend, Oregon

Date _____

By: _____
Mitch Calhoun, Senior Procurement Analyst
City of Bend, Oregon

Date _____

ALLOWABLE EXPENSES

The City will reimburse reasonable expenses incurred in the performance of the services under this agreement. The City reserves the right to reject any invoice for costs which, in the City's sole judgment, are determined to be unreasonable.

Contractor shall submit documentation for travel expenses that is satisfactory to the City. In the case of lodging and meal expense, a detailed statement of charges must be submitted with the request for reimbursement. Reimbursement of common carrier transportation expenses are limited to the cost of less than premium (first) class accommodations. Use of personal or company vehicle will be reimbursed at the IRS standard rate for business in effect at the time.

Following are examples of expenses that shall not be paid for by the City:

- liquor (including beer or wine)
- meals or lodging accommodations for family
- trip or rental car insurance
- any other personal expenditures, including those for entertainment
- traffic citations or parking tickets

Relevant Provisions of ORS Chapter 279B

279B.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

- (1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

279B.230 Condition concerning payment for medical care and providing workers' compensation.

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

279B.235 Condition concerning hours of labor.

* * * * *

(2) An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

* * * * *

(5) (a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.