

# **DESCHUTES PUBLIC LIBRARY COMMISSIONING SERVICES CONTRACT**

This Contract is by and between Deschutes Public Library District (“District” or “Owner”) and \_\_\_\_\_ (“Consultant”), a Commissioning firm, for the performance of commissioning services for the District.

## **A. RECITALS**

District has conducted a formal solicitation for proposals from Commissioning firms pursuant to District Public Contracting Rule 137-047-0260 for Commissioning Services.

Consultant submitted its proposal, having examined the Request for Proposals (RFP), and was chosen the most highly qualified Consultant, best suited to meet District's needs pursuant to the RFP criteria.

District has awarded this Related Services Agreement to Consultant.

## **B. CONTRACT EXHIBITS**

The following exhibits are hereby incorporated by reference into this Contract:

- Exhibit A – Request for Proposal including all Addenda
- Exhibit B – ORS 279B Personal Services Public Contracting Code Requirements
- Exhibit C – Consultant’s Proposal and Schedule of Rates and Charges by Work Package (WP1, WP2, WP3 and WP4) and Phase Cost Breakdown

In the event of a conflict between this Contract and its exhibits, the terms of this Contract shall prevail, followed by Exhibit B, then Exhibits A and C, in that order.

## **C. AGREEMENT**

### **1. Term**

The term of this Contract shall be from its execution to project completion, anticipated on or before May 27th, 2025, unless extended for additional periods of time upon mutual agreement of both parties. Such extension(s) will consider Consultant’s schedule of charges attached as Exhibit C to this Contract.

### **2. Scope of Work**

Consultant shall provide all services and deliver all materials as specified in the attached Exhibits.

- (a) This Contract establishes standard terms and conditions for services. Additional work may be authorized by separate Change Orders, which may include special terms and conditions.
- (b) Change Orders shall be used as the sole basis to authorize additional services related to this Contract. Owner or Consultant shall not make modifications to the

Contract, except in writing. Said Change Orders and amendments thereto shall be agreed to by both parties, with scope of work, delivery schedule, and total compensation to be negotiated at the time the Change Order is proposed by either party. Change Orders that do not meet these requirements shall not be binding, nor obligate Owner to pay for any such services performed.

During the term of this Contract, Consultant shall be available to receive District and District representative's questions. Responses to such questions and issues shall be received by District or District representative within 24 hours.

Upon District's request and without additional compensation, Consultant shall make such revisions to completed work product as are necessary to correct errors or omissions appearing therein, which deviated from the standard of care described in Section 20.

### **3. Contract Price**

3.1 Compensation. For the services described and performed by Consultant, the Owner agrees to pay, and the Consultant agrees to accept compensation in accordance with the Schedule of Rates and Charges, attached as Exhibit C, up to the maximum compensation set in each phase of work per each work package as defined in Exhibit C and cumulatively as set in Section 3.4 of this Contract.

3.2 Invoices. Invoices for Consultant's services shall be billed to the Owner in summary form itemized in Exhibit C, on or about the 5th day of each month for all services performed through the last day of the previous month. Reimbursable expenses shall be itemized and backup invoices provided if required by District. Upon request, Consultant will provide the District with documents, records, and draft plans evidencing the progress made to date. Consultant shall send invoices to District's representative at District's address set forth in Section 5. No payment shall be due for work undertaken, but not invoiced monthly during the term of this Contract.

#### **3.3 Payments.**

- a. District will review Consultant's invoice and within ten (10) days of receipt notify Consultant in writing if there is a disagreement or dispute with the invoice. If there are no such disputes with the invoice, District shall pay the invoice amount in full within thirty (30) days of invoice date.
- b. If District fails to make any payment due Consultant for services and expenses within thirty (30) days of the date on Consultant's invoice therefore, late fees will be added to amounts due Consultant at the rate of 1.0 percent per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute. In addition, Consultant may, after giving seven (7) days written notice to District, suspend services under this Contract until Consultant has been paid in full all amounts due for services, expenses, and charges, except any invoices in dispute.

3.4 Maximum Amount Payable. The maximum amount payable to Consultant under this Contract is \_\_\_\_\_ (\$ \_\_\_\_\_).

**4. Consultant Is an Independent Contractor**

Consultant shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under this Contract. While District reserves the right to set the schedule and evaluate the quality of Consultant's completed work, District cannot and will not control the means and manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing work. Consultant is responsible for all federal and state taxes applicable to compensation and payment paid to Consultant under the Contract and will not have any amounts withheld by District to cover Consultant's tax obligations. Consultant is not eligible for any District fringe benefit plans.

**5. Notices**

All notices provided for hereunder shall be in writing and shall be deemed to be duly served on the date of delivery if delivered in person, when receipt of transmission is generated by the transmitting facsimile machine if delivered by facsimile transmission, on the day after deposit if delivered by overnight courier, or three days after deposit if delivered by placing in the U.S. mail, first-class, postage prepaid. Any notice delivered by facsimile transmission shall be followed by a hard copy. All notices shall be addressed as follows:

District:            Todd Dunkelberg, Director  
Deschutes Public Library District  
507 NW Wall Street  
Bend, OR 97703  
Phone: (541) 385-3244  
Fax: (541) 389-2982  
Email: [toddd@deschuteslibrary.org](mailto:toddd@deschuteslibrary.org)

Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**6. Indemnification**

Consultant shall indemnify, hold harmless, and defend District and its representatives, officers, Board members, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits resulting directly or indirectly from Consultant's negligent performance and/or fault of Consultant, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of District and Consultant, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

Consultant shall defend District from claims covered under this section at Consultant's sole cost and expense until such time (1) as an arbitration panel or a court of competent jurisdiction determines that District is liable in whole or in part for the loss or claim caused by District's negligence or (2) until District and Consultant mutually agree to allocate the liability.

## **7. Insurance Requirements**

- 7.1 During the term of this Contract, Consultant shall maintain, at its own expense, the following types of insurance in the following amounts:
- a. Commercial General Liability insurance with a combined single limit of not less than \$2,000,000 each occurrence for bodily injury and property damage. Coverage shall include contractual liability coverage for the indemnity provided under this Contract.
  - b. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence.
  - c. Errors and Omissions insurance covering Consultant's liability arising out of negligent acts, errors or omissions in its performance of work or services under this Contract. Such policy will have a combined single limit of not less than \$2,000,000 per each claim, incident or occurrence for the term of the Project. Such policy will be on a claims made basis and will have an extended claims reporting period of six (6) years after final completion.
  - d. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.
- 7.2 Except as required in 7.1(c) above, if any of the above required insurance is arranged on a "claims made" basis, "tail" coverage will be required at final completion or termination of this Contract for a duration of two (2) years.
- 7.3 Policies shall provide that District, its Board, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 7.1(a) and a waiver of subrogation against them shall be obtained for all coverages.
- 7.4 All coverages under Section 7.1 shall be primary over any insurance District may carry on its own.
- 7.5 Consultant shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under this Contract.
- 7.6 All policies of insurance shall be issued by good, responsible companies, with a rating reasonably acceptable to District and that are qualified to do business in the state of Oregon.

7.7 Consultant shall furnish District with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. If requested by District, Consultant shall furnish District with executed copies of such policies of insurance. Consultant shall provide District with thirty (30) days' notice of cancellation, termination or non-renewal in coverage. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

## **8. Workers' Compensation**

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

8.2 Consultant warrants that all persons engaged in Contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Consultant shall indemnify District for any liability incurred by District as a result of Consultant's breach of the warranty under this paragraph.

## **9. Hours of Employment**

Consultant shall comply with all applicable state and federal laws regarding employment.

## **10. Assignment**

Consultant may not assign any of its responsibilities under this Contract without District's prior written consent, which consent may be withheld in District's sole discretion. Consultant may not subcontract for performance of any of its responsibilities under this Contract without District's prior written consent, which consent shall not be unreasonably withheld. Consultant's assigning or subcontracting of any of its responsibilities under the Contract without District's consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, Consultant shall remain liable for all of its obligations under this Contract.

## **11. Labor and Material**

Consultant shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Contract work, all at no cost to District other than the compensation provided in this Contract.

## **12. Ownership of Work and Documents**

All work performed by Consultant and compensated by District pursuant to this Contract shall be the property of District upon full compensation for that work performed or document produced to Consultant, and it is agreed by the parties that such documents are works made for hire. Consultant hereby conveys, transfers and grants to District all rights of reproduction and the copyright to all such documents. However, in the event

District reuses or modifies any materials furnished to District by Consultant, without Consultant's involvement or consent, then Consultant shall not be responsible for the materials.

**13. Termination for Convenience**

This Contract may be terminated by mutual consent of the parties upon written notice. In addition, District may terminate all or part of this Contract upon determining that termination is in the best interest of District by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Consultant. Upon termination under this paragraph, Consultant shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) District has against Consultant. Pursuant to this paragraph, Consultant shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Consultant. District shall not be liable for any costs invoiced later than thirty (30) days after termination unless Consultant can show good cause beyond its control for the delay.

**14. Termination for Cause**

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

- 14.1 If District funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.
- 14.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 14.3 If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

**15. Termination for Default**

If District fails to perform in the manner called for in this Contract or if District fails to comply with any other provisions of the Contract, Consultant may terminate this Contract for default. Prior to such termination, Consultant shall give to District written notice of the breach and intent to terminate. If District has not entirely cured the breach within fifteen (15) days of the date of the notice, then Consultant may terminate the Contract at any time thereafter by giving a written notice of termination.

If Consultant fails to perform in the manner called for in this Contract or if Consultant fails to comply with any other provisions of the Contract, District may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Consultant setting forth the manner in which Consultant is in default. Consultant shall be

paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract.

**16. Remedies**

In the event of breach of this Contract, the parties shall have the following remedies:

- 16.1 If terminated under paragraph 15 by District due to a breach by Consultant, District may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Consultant shall pay to District the amount of the reasonable excess.
- 16.2 In addition to the above remedies for a breach by Consultant, District also shall be entitled to any other equitable and legal remedies that are available.
- 16.3 If District breaches this Contract, Consultant's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Consultant is entitled.
- 16.4 District shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.
- 16.5 Upon receiving a notice of termination, and except as otherwise directed in writing by District, Consultant shall immediately cease all activities related to the services and work under this Contract. As directed by District, Consultant shall, upon termination, deliver to District all then existing work product that, if the Contract had been completed, would be required to be delivered to District.

**17. Nondiscrimination**

During the term of this Contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

**18. Governing Law; Jurisdiction; Venue**

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

**19. Compliance with Laws and Regulations**

Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with: (i) ORS 659A.425; (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) District's performance under this Contract is conditioned upon Consultant's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit B and incorporated herein by this reference. Consultant, its subconsultants 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 Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Consultant shall adhere to all safety standards and regulations established by District for work performed on its premises or under its auspices.

## **20. Experience, Capabilities and Resources**

By execution of this Contract, the Consultant agrees that:

- 20.1 Consultant is an experienced Commissioning Services firm having the skill, legal capacity, and professional ability necessary to perform all the Commissioning Services required under this Contract to design or administer the work of the scope and complexity of this project.
- 20.2 Consultant has the capabilities and resources necessary to perform the obligations of this Contract.
- 20.3 Consultant is familiar with all current laws, rules, and regulations which are applicable to the design and construction of the project, and that all drawings, specifications, and other documents prepared by Consultant shall be prepared in accordance with the standard of care of other professionals performing similar services under similar conditions and in an effort to accurately reflect and incorporate all such laws, rules, and regulations.

## **21. Drawings, Specifications and Other Documents**

Consultant hereby agrees that it will, in a manner consistent with its standard of care defined in above in Section 20, prepare all drawings, specifications, and other documents pursuant to this Contract so that they are complete and that the project, if constructed in accordance with the intent established by such drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility.

## **22. Errors and Omissions**

Consultant shall be responsible for correcting any errors or omissions in the drawings, specifications, and/or other documents which deviate from the standard of care set forth in Section 20. Consultant shall correct at no additional cost to District any and all such errors and omissions in the drawings, specifications, and other documents prepared by Consultant or its subconsultants. Consultant further agrees to assist District in resolving problems relating to the project designs or specified materials.

**23. Contract Performance**

Consultant shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. From the time District calls Consultant to the Project site, Consultant will report to the Project site within One (1)/Twenty-Four (24) days/hours. Consultant shall not be liable for delays that are beyond Consultant's control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any breach of Consultant's warranties or a default or defect in performance by Consultant that has not been cured. Consultant agrees that time is of the essence under this Contract.

**24. Access to Records**

For not less than three (3) years after the Contract expiration and for the purpose of making audit, examination, excerpts, and transcripts, District, and its duly authorized representatives shall have access to Consultant's books, documents, papers, and records that are pertinent to this Contract. If, for any reason, any part of this Contract, or any resulting construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Consultant shall provide full access to these records to District, and its duly authorized representatives in preparation for and during litigation.

**25. Representations and Warranties**

Consultant represents and warrants to District that (1) Consultant has the power and authority to enter into and perform this Contract, (2) when executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (3) Consultant shall, at all times during the term of this Contract, be duly licensed to perform the services, and if there is no licensing requirement for the profession or services, be duly qualified and competent, (4) the services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**26. District Obligations**

26.1 District shall provide full information in a timely manner regarding requirements for and limitations on the project. With regard to subcontractor liens, District shall furnish to Consultant, within fifteen (15) days after receipt of a written request, information necessary and relevant for Consultant to evaluate, give notice of, or enforce lien.

26.2 District shall establish and update, if necessary, overall project budgets, including Design and construction costs.

26.3 District shall furnish the services of consultants, when such services are requested by Consultant, reasonably required by the scope of a project, and agreed to by District.

26.4 Not Used

- 26.5 District shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the District's needs and interests, after Consultant has performed requisite duties.
- 26.6 District shall provide prompt written notice to Consultant if District becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in Consultant's design or performance under the contract.
- 26.7 District shall pay Consultant in accordance with paragraph 3 and Exhibit A of this Contract, upon receipt of Consultant's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed and progress made upon the project to date, on a pro rata basis.
- 26.8 District shall report the total amount of all payments to Consultant, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.
- 26.9 District shall guarantee access to, and make all provisions for Consultant to enter upon public and private property necessary for performance of the Scope of Work over which District exercises control.

## **27. Arbitration**

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

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

Notice of demand for arbitration shall be filed in writing with the other party to the agreement, subject to applicable statutes of limitation, except as set forth above. The

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

**28. Attorney Fees**

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

**29. Successors and Assigns; Subcontractors and Assignments**

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

**30. Limitation of Liabilities**

District shall not be liable for (i) any indirect, incidental, consequential, or special damages under the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

**31. Foreign Contractor**

If Consultant is not domiciled in or registered to do business in the state of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Consultant shall demonstrate its legal capacity to perform the work under this Contract in the state of Oregon prior to entering into this Contract.

**32. Confidentiality**

Consultant shall maintain the confidentiality of any of District's information that has been so marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Consultant from establishing a claim or defense in an adjudicatory proceeding. Consultant shall require similar agreements from District's and/or Consultant's subconsultants to maintain the confidentiality of information of District.

**33. Force Majeure**

Consultant shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

**34. Waivers**

No waiver by District of any provision of this Contract shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Consultant of the same or any other provision. District's consent to or approval of any act by Consultant requiring District's consent or approval shall not be deemed to render unnecessary the obtaining of District's consent to or approval of any subsequent act by Consultant, whether or not similar to the act so consented to or approved.

**35. Severability**

Any provisions of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

**36. Headings**

The captions contained in this Contract are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

**37. Integration**

This Contract, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Contract.

**38. Amendments**

Changes to the Contract shall be made only by written Amendment. No change in the work or any extra work shall be performed prior to execution of an Amendment by District, signed by the Consultant and District authorizing a change in the work and/or an adjustment in the price, deliverable due dates, substantial completion date, or final completion date. The price included on any Amendment shall be inclusive of all estimated costs, both direct and indirect, relating to the change in work. Further, the Amendment shall provide a detailed basis for substantiating any monetary and/or work changes. If monetary changes are made, the Amendment shall contain a maximum not to exceed amount.

**39. Authority**

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to make this Contract.

DISTRICT:

CONSULTANT:

DESCHUTES PUBLIC LIBRARY DISTRICT

\_\_\_\_\_

By: Todd Dunkelberg

Title: Director

By:

Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**

**District's Request for Proposal**

## **Exhibit B**

### **ORS CHAPTER 279B PUBLIC CONTRACTING REQUIREMENTS FOR PERSONAL SERVICES**

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1).
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2).
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3).
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617. ORS 279B.220(4).
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the District may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the District is unable to determine the validity of any claim for labor or material furnished, the District may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1).
- (7) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2).
- (8) Contractor shall employ no person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, Contractor shall pay the

employee at least time and one-half pay for: 1) all overtime in 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater, except for individuals under personal service contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime; or 2) work performed on the legal holidays specified in a collective bargaining agreement. ORS 279B.235.

- (9) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work. ORS 279B.235(2).
- (10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430.
- (11) The contract may be canceled at the election of District for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- (12) Contractor certifies its compliance with all applicable state and local tax laws, including but not limited to ORS 305.385, ORS 305.620, ORS chapters 316, 317 and 318. Contractor certifies it will continue to comply with all such tax laws during the term of this contract. Contractor's failure to comply with such state and local tax laws prior to executing this contract or during the term of this contract constitutes a default for which District may terminate this contract and seek damages and other relief available under the terms of this contract or applicable law. ORS 279B.045.
- (13) Contractor certifies that it has not discriminated and will not discriminate against minorities, women, emerging small business enterprises or a business enterprise that is controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontractors. ORS 279A.110.
- (14) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120.

## **Exhibit C**

**Consultant's Proposal and Schedule of Rates and Charges by Work Package (WP1, WP2, WP3 and WP4) and Phase Cost Breakdown**