

**REQUEST FOR
PROPOSALS**

Aquatic Center Conceptual Design, and Operations Plan

WEST LINN, OREGON

CITY COUNCIL

The Governing Body of the
City of West Linn

JOHN KOVASH, Council President

SCOTT BURGESS, Councilor

JODY CARSON, Councilor

TERI CUMMINGS, Councilor

Chris Jordan, City Manager

Ken Worcester, Parks & Recreation Director

CITY OPENING OF PROPOSALS

DATE: June 9, 2010

PLACE: The City of West Linn Parks and Recreation Department

22500 Salamo Road #1100, West Linn, Oregon 97068

TIME: 200 PM

SCHEDULE

RFP FIRST ADVERTISED	FRIDAY APRIL 30, 2010
RFP SUBMITTALS DUE	WEDNESDAY JUNE 9, 2010
TENTATIVE CONTRACT AWARD	JUNE 21, 2010
CONTRACT SIGNED	JUNE 23, 2010

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SECTION 1
REQUEST FOR PROPOSALS

REQUEST FOR PROPOSALS

Notice is hereby given that the City of West Linn, through its City Council will receive sealed proposals until **2:00 p.m. Wednesday June 9, 2010** in the Office of Parks and Recreation, 22500 Salamo Road #1100, West Linn, Oregon 97068 for the following:

Aquatic Center Conceptual Design and Operations Plan.

Proposals will be publicly opened after 2:00 p.m. that same day. Proposals received after 2:00 on the above mentioned date shall be returned unopened.

Proposals shall be submitted on the prescribed form and in said manner as indicated in the proposal documents. Use of recycled material is encouraged and the City reserves the right to use recycled material provided the provisions of ORS 279A.125 are met.

The City of West Linn reserves the right to reject any or all proposals, to postpone the award for 60 days, to delete certain items from the Proposal and to award the contract to the best possible proposer. Any proposal not in compliance with prescribed public bidding procedures and requirements will be rejected.

Proposal format and other related information is available at the Office of Parks and Recreation: 22500 Salamo Road #1100, West Linn, Oregon 97068, or on line at <http://westlinnoregon.gov/parksrec/aquatic-center-preliminary-design-services>

Sealed proposals must be physically received by Ken Worcester, Parks and Recreation Director, 22500 Salamo Road #1100, West Linn, Oregon 97068, on or before 2:00 p.m. on the 9th day of June, 2010. No proposals will be received or considered after that time.

Each proposal must contain a statement as to whether the vendor is a resident vendor, as defined in ORS 279A.120.

The West Linn City Council reserves the rights to reject any and all proposals not in compliance with all prescribed public bidding procedures and requirements, reject for good cause any and all proposals upon the finding that it is in the public interest to do so and waive any and all informalities.

Ken Worcester, Parks and Recreation Director

SECTION 2
INSTRUCTIONS AND CONDITIONS

SECTION 2

INSTRUCTIONS AND CONDITIONS

2.1 **GENERAL:**

Proposers must study carefully and conform to these "Instructions and Conditions" so that their proposals will be regular, complete and acceptable.

2.2 **PROPOSALS:**

Proposals shall be limited in format and length. All proposals shall be typed and single spaced, with font size no smaller than 11 point. Proposal pages shall be numbered consecutively. Format will be 8-1/2"x11" with fold out sheets allowed up to 11"x17" in size. All foldout sheets, up to a maximum of 11"x17" sheets will be counted as two pages and shall be labeled as such. Length of the Proposal shall be limited to a maximum of 25 pages (printed sheet faces). Any pages that exceed the maximum number of pages shall not be evaluated.

Additional supplemental information may be included in an appendix. The appendix may include any or all of the following: resumes of key personnel, sample reports, etc. (not included as part of the maximum number of pages).

Material excluded from the maximum page count:

- Title page
- Tables of contents page (one page maximum)
- Cover Letter
- Divider pages or tabs
- Supplemental attachments (Resumes, or forms)
- Back cover

Proposals carrying orders or qualifications may be rejected as irregular.

All proposals must be signed in ink in the blank spaces provided herein (Section 3). If a firm or partnership makes the proposal, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If a corporation makes the proposal, an official who is authorized to bind the contractor must sign it in the name of such corporation.

2.3. DELIVERY OF PROPOSALS:

All proposals must be submitted in a sealed envelope, bearing on the outside the name and address of the contractor, the name of the project for which the proposal is submitted and the time and date of the scheduled opening. If the proposal is forwarded by mail, the sealed envelope containing the proposal and marked as directed above, must be enclosed in another envelope addressed to the Ken Worcester, Parks and Recreation Director, 22500 Salamo Road #1100, West Linn, Oregon 97068.

2.4. RECEIPT AND OPENING OF PROPOSALS:

Proposals shall be submitted prior to the time fixed in the advertisement for proposals. Proposals received after the time so designated will be considered late proposals and will be returned unopened.

No responsibility will be attached to any official of the City for the premature opening of, or the failure to open, a proposal not properly addressed and identified.

At the time fixed for the opening, the proposals shall be opened so as to avoid disclosure of contents to competing proposals during the process of negotiation. A register of proposals shall be prepared and shall be open for public inspection after contract award. Once the closing time and date arrive, the names of the proposer submitting proposals are read publicly. No other information will be disclosed.

2.5. WITHDRAWAL OF PROPOSALS:

Proposals may be withdrawn by written or telegraphic request received from the contractors prior to the time fixed for opening. Negligence on the part of the vendor in preparing the proposal confers no right for the withdrawal of the proposal after it has been opened. The proposal will be irrevocable until such time as the City Council:

1. Specifically rejects the proposal, or;
2. Awards a contract and said contract is properly executed.

Contractors' proposals must be valid for at least sixty (60) days.

2.6. MODIFICATIONS:

Any proposer may modify his/her proposal by submitting a new proposal at any time prior to the scheduled closing time for receipt of proposals. The new proposal must state it supersedes and replaces the previous proposal

2.7. ACCEPTANCE OR REJECTION OF PROPOSALS:

In the award of the contract, the City Council will consider the element of time, will accept the proposal or proposals which in their estimation will best serve the interests of The City of West Linn, and reserves the right to award the contract to the contractor whose proposal shall be best for the public good. The City Council reserves the right to accept or reject any or all proposals. Without limiting the generality of the foregoing, any proposal, which is incomplete, obscure or irregular, may be rejected. Only one proposal will be accepted from any one firm or association. Any evidence of collusion between proposers may constitute a cause for rejection of any proposals so affected.

Since this is a Request for Proposals, the City will not add a percent increase on the proposal of a nonresident proposer equal to the percent, if any, of the preference given to that proposer in the state in which the proposer resides. See ORS 279C.400(4).

2.8. ADDENDA AND INTERPRETATIONS:

No oral interpretations shall be made to any proposer as to the meaning of any of the contract documents or be effective to modify any of the provisions of the contract documents. Every request for an interpretation shall be made in writing and addressed to the Parks and Recreation Director and, to be given consideration, must be received at least ten (10) days prior to the date set for the opening of proposals. Any and all such interpretations will be mailed to all prospective proposers (at the respective address furnished for such purposes) not later than five days prior to the date fixed for the opening of proposals. Failure of any proposer to receive any such addendum or interpretation shall not relieve such proposer from any obligation under this proposal as submitted. All addenda so issued shall become as much a part of the contract documents as if bound herein.

2.9. NONDISCRIMINATION:

The successful contractor agrees that, in performing the work called for by this proposal and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry unless the reasonable demands of employment are such that they cannot be met by a person with a particular physical or mental handicap.

2.10 FAILURE TO SUBMIT OFFER:

If no offer is to be submitted, do not return the RFP. Failure of the recipient to offer, or to notify the issuing office that future solicitations are desired, will not result in removal of the name of such recipient from the mailing list for the type of supplies or services covered by the solicitation.

2.11. PREPARATION OF OFFERS:

Proposers are expected to examine the specifications, and all instructions.

Each proposer shall furnish the information required by the solicitation. Proposers shall sign the solicitation and print or type their name on other submitted exhibits and each continuation sheet thereof on which an entry is made. The person signing the offer must initial erasures or other changes. Proposals signed by an agent are to be accompanied by evidence of his/her authority unless such evidence has been previously furnished.

Proposers shall state a definite time for delivery of supplies or for performance of services.

Time, if stated as a number of days, will include Saturdays, Sundays and holidays.

2.12. SPECIFICATIONS LIMITING COMPETITION:

Proposers may comment on any specification or requirement contained within this RFP, which they feel limits competition in the selection of a proposer to perform the services herein defined.

Such comments must be in writing, and are to be addressed to the City at the following address: Ken Worcester, Director, West Linn Parks and Recreation Department, 22500 Salamo Road, West Linn, Oregon 97068.

2.13. EMPLOYEES NOT TO BENEFIT:

No employee or elected official of The City of West Linn shall be admitted to any share or part of this contract or to any benefit that may arise there from; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. No Contractor shall provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of City in violation of ORS Chapter 244.

2.14. CITY FURNISHED PROPERTY:

No material, labor or facilities will be furnished by the City unless otherwise provided for in the Request for Proposals.

2.15. PAYMENTS:

The Contractor shall be paid, upon the submission of proper instruments as outlined below, the prices stipulated in the proposal for services rendered and accepted, less deductions, if any, as provided.

1. No claims will be considered for payment until the services are rendered with the exception of Solicitations or Purchase Orders that designate otherwise.

2. Payments will be made monthly, or as agreed, for any claims supported by an invoice and a duplicate.
3. The City of West Linn reserves the right, under this contract, to recover any damages due the City as specified in the clause of this contract entitled "Default".

2.16. PROTEST OF AWARD

The Notice of Intent to Award by The City of West Linn shall constitute a final decision of the City to award the contract if no written protest of the award is filed with the City Parks and Recreation Director within fourteen (14) calendar days from the notice of intent to award. If a protest is timely filed, the award is a final decision of the City only upon issuance of a written decision denying the protest and affirming the award.

Right to Protest. Any actual proposer who is adversely affected or aggrieved by the City's award of the contract to another proposer on the same solicitation shall have fourteen (14) calendar days from the notice of intent to award to submit to the City Parks and Recreation Director a written protest of the award. The written protest shall specify the grounds upon which the protest is based. In order to be an adversely affected or aggrieved proposer with a right to submit a written protest, a proposer must be next in line for award, i.e. the protester must claim that all higher rated proposers are ineligible for award because they are non-responsive or non-responsible. The City will not entertain protests submitted after the time period established in this rule.

SECTION 3
PROPOSAL CONTENTS AND RESPONSE

SECTION 3

PROPOSAL RESPONSE

Submitted by: _____

Address: _____

Date: _____ Phone number: _____

**The undersigned, through the formal submittal of this proposal response, declares that he/she has examined all related proposal documents and read the instructions and conditions, and hereby proposes to furnish consultant services for
Aquatic Center Conceptual Design, and Operations Plan
For the City of West Linn, Parks and Recreation Department,
WEST LINN, OREGON**

as specified, in accordance with the proposal documents herein.

The Proposer, by his signature below, hereby represents as follows:

- (a) That no, officer, or employee of The City of West Linn is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the City, its Councilors, officers, agents, or employees had induced him to enter into this contract and the papers made a part hereof by its terms;
- (b) That this proposal is made without connection with any person, firm or corporation making a proposal for the same material, and is in all respects, fair and without collusion or fraud.
- (c) The proposer agrees to accept as full payment for the services specified herein, the amount as shown in his/her proposal as the guaranteed maximum price.
- (d) Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

Proposer is:

[] Resident Proposer, as defined in ORS 279A.120

[] Non-Resident Proposer, Resident State: _____

The names of the principal officers of the corporation submitting this proposal, or of the partnership, or of all persons interested in this proposal as principals are as follows:

_____	_____
Name	Title

_____	_____
Name	Title

_____	_____
Name	Title

(If Sole Proprietor or Partnership)

In witness hereto, the undersigned has set his (its) hand this _____ day of _____, 20__.

Name of Firm

Signature of Proposer

(If Corporation)

In witness whereof the undersigned corporation has caused this instrument to be executed by its duly authorized officers this _____ day of, 20__.

Name of Corporation

By

Title

PROPOSAL CONTENTS

3.1 **GENERAL:**

The proposal should contain the required elements as stated in SECTION 4, SCOPE OF WORK AND CONDITIONS.

The City reserves the right to solicit additional information or proposal clarification from the firms, or any one firm submitting a proposal, should the City deem such information necessary.

Any proposer-supplied material that is to be considered confidential must be so marked.

The proposals shall be submitted to Ken Worcester, Director, West Linn Parks and Recreation Department, 22500 Salamo Road, West Linn, Oregon, 97068.

One (1) signed original and five (5) copies of the proposal shall be submitted. The original shall be marked as such.

3.2 **DETAILED PROPOSAL CONTENTS:**

The proposal shall contain the required criteria in the following format:

Section 1 Cover Letter and Transmittal – A one- to two-page dated cover letter with original signature shall be submitted containing the name, address, tax filing name and number of the corporation or business structure submitting the proposal. Also submit the name, address, telephone, and fax numbers and title of the person authorized to represent the proposer.

Each responsive Proposal must contain a cover letter addressing the following:

- a) Experience in aquatic facility design, commercial building design, energy management control systems and incorporating sustainable materials and construction practices.
- b) Expertise and experience in designing and administering aquatic facilities.
- c) Expertise and experience in operation of fiscally successful aquatic facilities
- d) Experience in LEED certification.
- e) Experience in With public involvement.

Section 2 Table of Contents – A table of contents of the material included in the proposal.

Section 3 Proposal (Project Approach/Schedule) – A delineation of proposed services and approach to the project and a list of subcontractors and their roles in the project. This section shall include a flow chart, methodology, unique experience, management strategies etc.

Each responsive Proposal will be evaluated to assess the firm's specific understanding of project requirements, and the steps necessary to meet the project goals, as well as overall project approach.

The firm should provide a step-by-step detailed description (including deliverables and key milestones) as to how they would approach the project in order to minimize project costs and maximize project profitability for the City through specific amenities and operations.

Section 4 Proposer Capabilities – This section shall demonstrate specific capabilities for fulfilling the requirements according to similar previous experience. This section shall also provide the same relevant information on the key individual(s) including subcontracted team members that will be assigned to this project. Each responsive Proposal shall include relative experience on similar or relevant projects from the last three (3) years. Provide key team members' history on similar size projects and scopes within the past three (3) years and provide the dollar amount, size and scope of the projects. Proposers should demonstrate familiarity with the City of West Linn, specifically conducting public involvement processes with City residents if applicable.

- 4.1. *Qualifications*: A statement of particular expertise and experience in providing studies of municipal and commercial aquatic facilities
- 4.2. *Resume(s)*: With educational background, including all degrees and certifications earned, work history, for all staff performing work under the scope of this request for Proposals.
- 4.3. *References*: A minimum of three recent, relevant projects shall be identified with the contact person and phone number. 4.3.1 We reserve the right to investigate the references and the past performance of any applicant with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, and its completion of a project on schedule.

Section 5 List of Exceptions – This section shall describe any exceptions taken to any section in the RFP.

Section 6 Fee – This section shall list the lump sum fee to provide the proposed services. Please detail fee schedule by project component identified in 4.2 Work Tasks. **(Note: provide this information in a separate enclosed sealed enveloped marked "Fee Proposal".)**

SECTION 4

SCOPE OF WORK AND CONDITIONS

SECTION 4

SCOPE OF WORK AND CONDITIONS

4.1 INTRODUCTION:

The City of West Linn is requesting proposals for conceptual design and operations plan, construction cost analysis/estimates, operations and programming pro forma and copy ready public informational material for a proposed West Linn Aquatic Center.

4.2 WORK TASKS

Task 1: Review existing information and reports, included but not limited to West Linn Parks, Recreation and Open Space Plan (MIG 2007)

http://westlinnoregon.gov/files/WL_Parks_Recreation_Open_Space_Plan_MIG_2007.pdf

West Linn - Lake Oswego Aquatic Center Feasibility Study (Ballard King 2003)

http://westlinnoregon.gov/files/WL_LO_Aquatic_Center_Feasibility_Study_Ballard_King_2003.pdf

West Police Station and Aquatic Center Site Concept Studies (Group Mackenzie 2009)

http://westlinnoregon.gov/files/WL_PD_Aquatic_Center_Site_Concept_Studies_Group_Mackenzie_2009.pdf

Advisory Ballot Concept Plan (City of West Linn 2004)

http://westlinnoregon.gov/files/Advisory_Ballot_Concept_Plan_West_Linn_2004.pdf

West Linn Police Station Preliminary Design (Group Mackenzie 2010)

<http://westlinnoregon.gov/policestation/space-needs-assessment>

and the City of West Linn Community Development Code

<http://westlinnoregon.gov/cdc>.

Task 2: Recommend and coordinate any further due diligence site studies necessary to complete all tasks.

Task 3: Research and present informational report on existing economically successful publicly owned aquatic centers and or public private partnerships suitable for potential use as a potential business model. (This may influence elements to include in the conceptual design.)

Task 4: Evaluate and propose operational programs and provide up to date cost/revenue projections related to the Center's operations, with a goal of expense/revenue neutral business plan.

Task 5: Prepare conceptual building design designed around LEED Gold standards. (This design shall work with and compliment the West Linn Police Station Conceptual Design - Group Mackenzie 2010). This design shall include conceptual site design, elevations and perspectives.

Task 6: Based on Final Conceptual Design and Program, prepare public informational handout for total program (construction cost, operational costs, revenues and GO bond/ serial levy impacts). Deliverables shall at a minimum include 1 mounted design set with elevations, floor plans and perspectives, and electronic copies of all other final work.

4.3 PUBLIC INVOLVEMENT PROCESS

The consulting team is expected to have experience in implementing the public involvement process to encourage all interested parties to participate in the planning process.

The public involvement process is intended to be an integral part of the development of the design and operations plan. It is not intended to be an isolated task, but rather a process that solicits and incorporates public input at key points in this planning effort.

The selected consulting team should have experience and anticipate and include in their cost proposals, resources required for attending one pre-design meeting with Staff and the Parks and Recreation Advisory Board, progress meetings with City Staff, two to three public involvement meetings, two – three Park & Recreation Advisory Board meetings, one Planning Commission meeting, one City Council Work Session, and one City Council meeting.

4.4 QUESTIONS ON TECHNICAL INFORMATION:

Questions relating to materials in the Standard Specifications and Conditions Evaluation and Selection Criteria (SECTION 5) shall be addressed in writing to:

Ken Worcester
Parks and Recreation Director
City of West Linn
22500 Salamo Road West Linn, Oregon 97068
E-mail kworcester@westlinnoregon.gov

4.5 PROJECT SCOPE:

The Parks and Recreation Department has budgeted a range of \$50-75,000 for this project in its 2010 – 2011 biennial budget that includes the design phase.

4.5.1 Maximum Price:

The Contractor shall provide a guaranteed maximum price lump sum fee to provide Consultation Services as outlined herein. Information shall be given to support the lump sum fee, including labor costs, meeting costs, design costs and deliverables.

4.5.2 SUBCONTRACTORS,

The city of West Linn requires that each proposer shall state in his proposal the subcontractor(s) that he anticipates to employ to perform any work on this project. This statement shall include the name of the subcontractor, address, telephone, estimated percentage of work, statement of qualifications and experience and the nature of work to be performed. The Contractor shall be responsible for transmitting and enforcing all contract requirements to subcontractors. The proposal shall also state the method for selecting the subcontractor

SECTION 5
EVALUATION AND SELECTION CRITERIA

SECTION 5 EVALUATION AND SELECTION CRITERIA

5.1 **PROPOSAL REVIEW:**

The Review Committee will evaluate the submitted Proposals. Each proposal will be evaluated on their adherence to the specifications outlined in Section 4 Scope of Work and Conditions and Section 5.2 Evaluation Criteria.

The Review Committee consists of City Staff and the West Linn Parks and Recreation Advisory Board.

Selected proposers will be contacted for further evaluation if necessary, that may include oral interviews. Although price is a consideration when engaging this proposer, the intent is to provide the City with a given level of specialized skill, knowledge, and resources and qualifications, performance history; expertise, knowledge and the ability to exercise sound professional judgment are primary considerations in the selection process. Provide written reference statements or letters from at least three agencies or clients for whom you have provided the requested services, attesting to the quality, availability and timeliness of your service. These statements must include the name, address and phone number of a person we may contact to discuss the reference statement.

The City Council will review the recommendation on proposals from the Review Committee Staff and authorize the City Manager to enter into contract negotiations to establish the Guaranteed Maximum Price. During negotiation the City may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the City is unable to come to terms with the first choice contractor, discussions shall be terminated and negotiations will begin with the second choice contractor. The City reserves the right to reject any and all proposals.

5.2 **EVALUATION CRITERIA:**

The following criteria will be considered in evaluating all proposals. A major deficiency in any one category can disqualify the proposer.

- | | | |
|----|---|--------------------|
| 1. | Content
Submitted proposals must contain all items listed in Section 3 Proposal Contents | 0-5 points |
| 2. | Project Understanding, Approach & Scope
The approach offered by the proposer will be evaluated in terms of its applicability to the requirements specified in this RFP. | 0-40 points |

3. Qualifications & Experience

0-30 points

The experience of the proposer and /or subcontractors in like projects and history of the company or individual will be considered.

4. Fee & Schedule

0-25 points

All proposals will be evaluated on the guaranteed maximum price lump sum fee required to meet the requirements in this RFP.

TOTAL POINTS

0-100

SECTION 6
SAMPLE CONTRACT FOR SERVICES

**CITY OF WEST LINN
PERSONAL SERVICES CONTRACT**

THIS AGREEMENT made and entered into this ____ day of _____, 20__ by and between the City of West Linn, an Oregon municipal corporation, (City), and _____ (Consultant).

RECITALS

WHEREAS City has need for the services of a company with a particular training, ability, knowledge, and experience possessed by Consultant, and

WHEREAS City has determined that Consultant is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth,

THEREFORE the Parties agree as follows:

1. SERVICES TO BE PROVIDED

The scope of the services shall be as set forth in Consultant's proposal, a copy of which is attached hereto, labeled Exhibit A and by this reference made a part hereof. Consultant shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, on _____. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. COMPENSATION

City agrees to pay Consultant in an amount not to exceed \$_____ for performance of those services described herein, which payment shall be based upon the following applicable terms:

- A. Payment by City to Consultant for performance of services under this Agreement includes all expenses incurred by Consultant, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Consultant's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C. Payment by City shall release City from any further obligation for payment to Consultant, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- D. Where applicable, Consultant must make payment promptly as due to persons supplying Consultant labor or materials for the execution of the work provided by this order.

Consultant must pay all contributions or amounts due from Consultant to the Industrial Accident Fund incurred in the performance of this order. Consultant shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Consultant further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

- E. If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Consultant or a sub consultant by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due 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.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279C.540. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.
- G. 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.
- H. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. OWNERSHIP OF WORK PRODUCT

City shall be the owner of and shall be entitled to possession of any and all work products of Consultant which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Consultant prior to termination of this Agreement by Consultant or upon completion of the work pursuant to 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 sub consultants and of all persons employed by them, and neither the approval by City of any sub consultant nor anything

contained herein shall be deemed to create any contractual relation between the sub consultant and City.

6. **STATUS OF CONSULTANT AS INDEPENDENT CONSULTANT**

Consultant certifies that:

- A. Consultant acknowledges that for all purposes related to this Agreement, Consultant is and shall be deemed to be an independent contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Consultant is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Consultant under the terms of this Agreement, to the full extent of any benefits or other remuneration Consultant receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Consultant or to a third party) as a result of said finding.
- B. 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 description from Consultant, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

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 or her normal charge for the type of service provided.

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.

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

7. **INDEMNIFICATION**

City has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a consultant's work by City shall not operate as a waiver or release.

Consultant agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages,

judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which arise from, the performance of the work described in this contract, except to the extent that the liability arises out of the negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. 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.

8. **INSURANCE**

Consultant shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the consultant arising directly or indirectly out of Consultant's work performed hereunder, including the operations of its sub consultants of any tier. Coverages provided by the Consultant must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating. Consultant's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. Contractor shall provide certificates of such insurance to City. As evidence of the insurance coverage required by the contract, the Consultant shall furnish a Certificate of Insurance to City. Such policies or certificates must be delivered prior to commencement of the work. No contract shall be effective until the required certificates have been received and approved by City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration. 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 of consultant connected with this contract.

The policy or policies of insurance maintained by the Consultant 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 (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

B. Commercial Automobile Insurance

Consultant shall also obtain, at consultant's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

C. Workers' Compensation Insurance

The Consultant, its sub consultants, if any, and all employers providing work, labor or materials under this Contract that are either 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 or employers that are exempt under ORS 656.126. 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 \$500,000 each accident.

D. Professional Liability Insurance

Insurance covering losses resulting from error or omissions of Consultant. The limit of liability shall be not less than \$1,000,000 per claim and in the aggregate.

E. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.

9. INDEPENDENT CONSULTANT STATUS

The service or services to be rendered under this contract are those of an independent consultant as defined in ORS 670.600. Consultant is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

10. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND 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	Consultant
City of West Linn	Company:
Attn:	Attn:
	Address:
Phone:	Phone: -
Fax:	Fax:
Email Address: mailto:	Email Address: http://

and 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 who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

11. 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.

12. 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.

13. TERMINATION WITH CAUSE

- A. City may terminate this Agreement effective upon delivery of written notice to Consultant, or at such later date as may be established by City, under any of the following conditions:
- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds
 - 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.

- 3) If any license or certificate required by law or regulation to be held by Consultant, its sub consultants, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Consultant becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Consultant, if a receiver or trustee is appointed for Consultant, or if there is an assignment for the benefit of creditors of Consultant.

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

B. City, by written notice of default (including breach of contract) to Consultant, may terminate the whole or any part of this Agreement:

- 1) If Consultant fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Consultant 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 City, fails to correct such failures within ten (10) days or such other period as City may authorize.
- 3) If Consultant fails to eliminate a conflict as described in Section 11 of this agreement.

If City terminates this Agreement under paragraph (b), Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Consultant bear to the total services otherwise required to be performed for such total fee;

14. 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.

15. FORCE MAJEURE

Neither City nor Consultant shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of sub consultant or supplies due to such cause; provided that the parties so disabled shall within ten (10) 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.

16. 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.

17. 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 Amended Americans with Disabilities Act, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

18. 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.

19. EXTRA (CHANGED) WORK

_____ shall be the Contract Administrator for City. Only the Contract Administrator may authorize extra and/or changed 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.

20. WARRANTIES

All work shall be guaranteed by Consultant for a period of 90 days after the date of final acceptance of the work by the owner. Consultant warrants that all practices and procedures, workmanship shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Consultant from liability under warranties contained in this Agreement. Manufacturer's warranty shall apply to all products/materials. **(NOTE --- THIS PROVISION MAY BE OMITTED IF NO GOODS ARE PROVIDED OR PHYSICAL WORK PERFORMED)**

21. ATTORNEY'S FEES

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

22. 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 appropriate court of the State of Oregon.

23. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Consultant shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments

to employees and sub consultants and income tax withholding contained in ORS Chapter 279A and 279B, the provisions of which are hereby made a part of this agreement

24. 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.

25. 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.

26. 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.

27. COMPLETE AGREEMENT

This Agreement, and attached exhibits constitutes 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. 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 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.

City Of West Linn

By:

Date

Consultant

Contract # _____

By:

Date

EXHIBIT A
SERVICES TO BE PROVIDED – PER QUOTATION
SEE ATTACHED