



EUGENE WATER & ELECTRIC BOARD (EWEB)
500 E 4th Avenue
Eugene, OR 97401

Request for Qualifications

Master Planning and Public Engagement Services

**Provide Urban Design, Public Involvement & Land Planning Services for
the EWEB Riverfront Master Plan**

RFQ Number: 032-2008
Date of Issue: October 15, 2008

Name: Gail Murray
Title: Purchasing Coordinator
EWEB Purchasing/Risk Management Department

LEGAL ADVERTISEMENT

RFQ Number: 032-2008

Master Planning and Public Engagement Services

Provide Urban Design, Public Involvement and Land Planning Services for the EWEB Riverfront Master Plan

The Eugene Water & Electric Board (EWEB) requests Statements of Qualifications (SOQ's) from comprehensive multi-disciplinary design teams headed by qualified, licensed, professional architects, urban planners and/or landscape architects to provide Master Planning services for the EWEB Riverfront Master Plan Project.

A second non-mandatory site tour is scheduled for Thursday, November 13, 2008 at 2:00 p.m. The tour will begin from the lobby of the EWEB headquarters building, 500 E 4th Ave. Eugene, OR. This tour is to give an opportunity to potential proposers to view the sites. The same sites will be viewed that were viewed on the first tour. An addendum will be prepared to address any questions that are generated by the site tour and will be posted for all proposer on the EWEB website. Proposers who attended the first tour do not need to attend, but are welcome to attend if they so choose.

This Request for Qualifications (RFQ) will result in the award of a Contract to a single Contractor to provide a highly qualified design team with proven experience in master planning, including land use planning and design for mixed use development of a waterfront site.

EWEB will negotiate the Statement of Work and payment for the Work with the highest-ranked (qualified) Proposer as a result of this RFQ.

RFQ documents may be obtained from the Purchasing Department at 500 East 4th Avenue, Eugene, Oregon, by calling 541-434-5754, or you may download the RFQ documents from the EWEB Purchasing website: <http://www.eweb.org/bids-contracts/index.htm>

Qualifications shall be submitted to **GAIL MURRAY, CPPB, PURCHASING COORDINATOR**, Eugene Water & Electric Board, 500 East 4th Avenue, PO Box 10148, Eugene, OR 97440, before **2:00 PM** Pacific Time, on **Wednesday, November 26, 2008**. Qualifications will be opened immediately thereafter and recorded. **Qualifications will not be accepted after this hour and date.**

All submittals submitted shall be in sealed envelopes and plainly marked on the outside showing the name of the proposer and the RFQ Number.

No SOQ may be withdrawn after the hour set for the opening thereof until the elapse of sixty (60) days from the date and time set for opening.

EWEB reserves the right to waive any or all informalities and irregularities; may reject any Proposals not in compliance with all prescribed public procurement procedures and requirements; and may reject for good cause any or all Proposals upon a finding by EWEB that it is in the public's interest to do so.

GAIL MURRAY, CPPB
PURCHASING COORDINATOR

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SECTION ONE

Instructions to Proposers

1.01

Purpose of the RFQ

EWEB is seeking qualifications/proposals from comprehensive multi-disciplinary design teams headed by qualified, licensed, professional architects, urban planners and/or landscape architects to provide Master Planning services for the Eugene Water & Electric Board Riverfront Master Plan Project. It is intended that the responses to this RFQ will provide EWEB with the information necessary to select a highly qualified design team with proven experience in master planning, including land use planning and design for mixed use development of a waterfront site.

1.02

Return Mailing Address, Contact Person, Telephone, Fax Numbers and Deadline for Receipt of Proposals

Proposers shall submit one electronic copy in PDF format on a compact disc (CD), one (1) original hardcopy and fifteen (15) photo copies of their proposal to EWEB's Purchasing Coordinator in a sealed envelope. Fax and emailed Proposals are not allowed. Proposals must be addressed as follows:

EUGENE WATER & ELECTRIC BOARD
Attention: **Gail Murray, CPPB**
Request for Qualifications (RFQ) Number:
Project name: **Master Planning & Public Engagement Services**
EWEB Riverfront Site
500 E 4th Avenue
Eugene, OR 97401

Proposals must be received no later than **2:00 p.m. (Pacific Time) on Wednesday, November 26, 2008**. Oral Proposals are not acceptable. The size of the proposal is limited to 30, 8 ½" x 11" pages of no smaller than 10 point font. Resumes of key individuals proposed to be involved in this project are exempted from the 30-page limit, if they are appended to the end of your proposal, and shall not exceed 2 pages in length. The Proposal should include a Table of Contents and the pages should be numbered.

The proposal shall clearly identify proposer's response to the experience and qualifications required and evaluation criteria as requested herein

Failure to submit a Proposal prior to the deadline will cause the Proposal to be disqualified. Late Proposals or amendments will not be opened or accepted for evaluation.

SINGLE POINT OF CONTACT:

Purchasing Coordinator: Gail Murray, CPPB
EMAIL: gail.murray@eweb.org

PHONE: (541) 434-5754

FAX: (541) 984-4717

This person is the single point of contact during the entire solicitation process for clarification and/or protest of specification, contract terms, the evaluation and award process, and/or other questions regarding the RFQ process that may arise.

1.03

Definitions

The following definitions are provided as a courtesy to potential proposers:

Eugene Water & Electric Board may be referred to as: "Eugene Water & Electric Board," "EWEB," "Owner," "the utility," or "agency."

Proposers may be referred to as: "Proposers," "Offerors," "Companies," "Bidders," or "Respondents."

The successful Proposer awarded a Contract from this solicitation may be referred to as: "Contractor," "Successful Proposer," or "the Awarded Party."

Oregon Revised Statute may be referred to as "ORS."

Oregon Administrative Rule may be referred to as "OAR."

Statement of Qualifications may be referred to as "SOQ."

Memorandum of Understanding may be referred to as "MOU" A copy of the MOU with City of Eugene may be viewed on EWEB's website at <http://www.eweb.org/news/projects/riverfront/documents/RiverfrontMOU.pdf>

Citizen Advisory Team may be referred to as "CAT"

1.04

Schedule of Events

The schedule of events set out herein represent Eugene Water & Electric Board's best estimate of the schedule that will be followed. If a component of this schedule, such as the opening date, is delayed, the rest of the schedule will be shifted by the same number of days. Participation in the optional site tour is strongly encouraged to help Proposers with their understanding of the complexities of the site. The site tour will begin in EWEB's main lobby at 1:00 pm.

The approximate contract schedule is as follows:

Request for Qualifications Released	10/16/08
Site Tour	10/23/08
Last Date for Request for Changes/Protests of Specifications/Terms and Conditions	11/19/08
Closing Date (last day to submit proposals to EWEB)	11/26/08
Responses Evaluated	11/26/08 – 12/05/08
Interviews (if required)	12/15/08 – 12/19/08
Intent to Award Announcement	12/31/08
Begin contract negotiation - Statement of Work (Total Hours, Deliverables, Not-to-Exceed cost, etc.)	01/02/09
Board Approval of Contract	02/03/09

Contract Award - Begin Scope of Work	02/09/09
Contract Completion	09/30/09

1.05

Protest of Specification/Request for Change or Clarification

A Proposer who needs clarification, or who believes procurement, technical or contractual requirements are unnecessarily restrictive or limit competition, may submit a request for clarification or protest, in writing, to the EWEB Buyer listed in Item 1.02. To be considered, the clarification or protest must be received no later than five (5) business days before the closing date and time of this solicitation. Protest of procurement, technical or contractual requirements shall include the reason for protest, and any and all documented, factual information that supports Proposer's protest, and any proposed changes to the requirements.

The right to protest procurement, specifications and/or contractual terms is provided in OAR 137-30-0050, as a provision for "checks and balances" on the Request for Proposal. EWEB Purchasing shall promptly respond in writing to each written protest, and where appropriate, issue all revisions, substitutions, or clarifications via addenda.

Protests/request for change or clarification may be submitted via US Mail, delivery service, fax or email.

1.06

Addenda

EWEB reserves the right to make changes to the Request for Proposal and the resulting contract, by written addenda, prior to the closing date and time. Addenda shall only be issued by EWEB and, upon issuance, are incorporated into the Request for Proposal and the resulting contract. If required by addendum, Proposers shall sign and return the addendum prior the closing date and time.

The Proposer is responsible for ensuring that all addenda have been received and are acknowledged in their response.

1.07

Preparation Costs

EWEB will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

1.08

Proprietary Information/Public Disclosure

Materials submitted in response to this RFQ shall become the property of EWEB and are, therefore, subject to public records laws.

In the event that a Proposer desires to claim that portions of its submittal are exempt from public disclosure, under the provisions of ORS 192.501, it is incumbent upon the Proposer to identify those portions in a transmittal letter. The transmittal letter must identify the page and the particular exemption(s) from disclosure upon which the claim is made. Each page claimed to be exempt from disclosure must be clearly identified, on the page, by the words: "This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS 192.

If EWEB receives a request for public records disclosure of the information so designated as "confidential by Proposer, EWEB will make a reasonable attempt to notify Proposer of the request so Proposer may claim any exemption Proposer is entitled to under applicable laws.

The Oregon Public Records Law exempts from disclosure trade secrets, and the exemption from disclosure applies "unless the public interest requires disclosure in the particular instance," ORS 192.501(2). Therefore,

non-disclosure of documents or any portion of a document submitted as part of this solicitation may depend upon official or judicial determinations made pursuant to the Oregon Public Records Law.

In any event, EWEB will, to the fullest extent permitted by Oregon Law, assist the Proposer in protecting proprietary information submitted pursuant to this RFQ.

1.9 Collusion

By submitting a proposal, Proposer certifies that no officer, agent, or employee of EWEB has a pecuniary interest in this Proposal; that the Proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer and that the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

1.10 Publicity

Any publicity giving reference to this solicitation, whether in the form of press releases, brochures, photographic coverage, or verbal announcement, shall be done only after prior approval of EWEB.

1.11 Disputes

In case of any doubt or differences of opinions as to the items or services to be furnished hereunder, or the interpretation of the provisions of the RFQ, the decision of EWEB shall be final and binding upon the parties.

1.12 Proposal Acceptance

Proposals providing less than 120 days for acceptance by EWEB from the date set for opening of proposals will be considered non-responsive and will be rejected. Proposals that do not address all areas requested by this RFQ may be deemed non-responsive and may not be considered for any possible contract awarded as a result of this RFQ.

1.13 Amendments to Proposals

Amendments to proposals will only be allowed if acceptable requests are received prior to the deadline set for receipt of proposals. No amendments will be accepted after the deadline (RFQ closing date & time).

1.14 Withdrawal of Proposals

At any time prior to the scheduled closing date and time for receipt of proposals, a Respondent may withdraw and/or resubmit a proposal, by written request. Proposals may not be withdrawn after the solicitation closing date and time.

SECTION TWO BACKGROUND INFORMATION

2.01 Background

The Eugene Water & Electric Board (EWEB) is a municipally owned water, electric and steam utility. Since the early 1950's, EWEB has headquartered its Administration and Operation functions on approximately 27 acres of riverfront property adjacent to downtown Eugene. The site, located at 500 E. 4th Avenue, is bounded on the north by the Willamette River, the south by the Union Pacific Railroad, the east by University of Oregon property and the west by commercial and residential areas.

Due to existing and future space constraints for employees and equipment, EWEB purchased property in west Eugene to construct a new Operations Center for the utility. The new facility will consist of a water and electric operations center, a warehouse, vehicle repair shop and a storage yard. It is anticipated that the Operation functions of the utility will be relocating to the west Eugene site in the autumn of 2010. The administrative functions, EWEB's Headquarters building, will remain at the Riverfront site. The relocation of the operations facilities will make approximately 14 Riverfront site acres available for redevelopment.

EWEB is seeking qualifications/proposals from comprehensive multi-disciplinary design teams headed by qualified, licensed, professional architects, urban planners and/or landscape architects to provide Master Planning services for the Eugene Water & Electric Board Riverfront Master Plan Project. Responses to this RFQ must provide EWEB with the information necessary to select a highly qualified design team with proven master planning experience including, land use planning and design for mixed use development of a waterfront site. The resulting Master Plan will include all 27 acres of the EWEB Riverfront ownership. The selected design team will work with the Community Advisory Team (CAT) that was appointed by the City of Eugene and EWEB to arrive at a Master Plan that will meet with approval of the EWEB Board of Commissioners. The CAT has a consensus decision-making process that will be integral to how the design team functions and collaborates. EWEB's Board of Commissioners will have final approval of any proposed Master Plan developed by the design team in cooperation with the CAT.

Project Objectives

Discussions concerning the redevelopment of the EWEB riverfront site and implementing the vision to connect the riverfront to the core of downtown have been ongoing for many years. In April 2004, Eugene City Council adopted the Downtown Plan, which references the potential and community value of the EWEB riverfront property. The Downtown Plan may be accessed at www.eugene-or.gov/downtown

The Downtown Plan states: "Bringing downtown to the river reconnects the city to our heritage and our most precious natural resource." The Downtown Plan also states, "EWEB's property, approximately 27 acres, represents the best opportunity for the development of a downtown riverfront. The redevelopment of EWEB's property will require a well-conceived concept that brings Eugenians and visitors to the river's edge, and provides opportunities to enjoy this special area in all seasons."



The Downtown Plan contains a policy requiring that a master plan be approved for the EWEB riverfront property prior to any redevelopment or land use action not related to public utility use. In December 2007, the EWEB General Manager and the Eugene City Manager signed a Memorandum of Understanding (MOU) regarding the process for developing the master plan. The MOU spells out a collaborative process beginning with the appointment of a Community Advisory Team to guide the development of the master plan, and providing for significant community engagement in the process. A copy of the MOU can be found at: <http://www.eweb.org/news/projects/riverfront/documents/RiverfrontMOU.pdf>

The objectives of the Riverfront Master Plan are to comply with the relevant City Codes, in particular the criteria in the Downtown Plan, to balance the desires of the citizens and ratepayers, and optimize the value of the Riverfront property for redevelopment in order to off-set development costs for the new Operations Center on Roosevelt Blvd. Specifically, the master plan needs to:

- Create community support for the Riverfront Master Plan,
- Comply with the Downtown Plan and relevant City Codes,
- Optimize the value of the EWEB Riverfront property,
- Protect the Willamette River riparian edge,
- Provide for the protection of the remaining key utility infrastructure on the Riverfront site, and
- Ensure efficient operations of the remaining administration functions.

The requirement for a master plan and the criteria for the approval of the master plan are contained in a policy in the Downtown Plan. The policy reads as follows:

A master plan for the EWEB riverfront property must be approved by the City before any redevelopment, land use Proposal, rezoning, Metro Plan or refinement plan diagram amendments are approved for uses not associated with EWEB functions. The master plan shall be evaluated based on its consistency with principles A through D below:

- A. Create a "people place" that is active, vibrant, accessible and multi-use.
- B. Provide appropriate setbacks, deeper where environmental or habitat issues are more critical, shallower in other areas.
- C. Incorporate appropriate building and site design techniques that address environmental concerns.
- D. Incorporate an educational aspect, so that the riverfront improvements teach us about our river, our history and our city.



The master plan must include all 27 acres of the EWEB riverfront property, even though, it is envisioned that only 14 acres will be available for redevelopment at this time. Existing buildings on the EWEB riverfront site that are anticipated to remain in EWEB's use include the North and South Administration Buildings, Steam Plant with two Package Boiler Plants and an electrical substation. Other uses that are currently on the site include a Water Operations Center and Warehouse, an Electric Operation Center, a vehicle repair shop, an equipment repair shop, credit union and the Midgley Building, that currently houses a Child Care Center, an employee workout room, and an engineering firm (tenant). The buildings vary greatly in age and construction. There are major utilities encumbering the site including water and electric transmission lines and a large storm sewer pipe that currently contains the historic Millrace. A site map is included in the attachments.

2.02

Length of Contract

The length of the CONTRACT will be from the date of award, approximately January 23, 2009, and will last approximately eight (8) months, UNLESS EWEB determines it to be in its best interest to amend the contract and further negotiate the Statement of Work, Deliverables and Not-to-Exceed Cost for completing the work.

2.03

Location of Work

The location of the work is to be performed, completed and managed at Contractor's business location, except for any necessary on-site work at EWEB's current headquarters facility.

EWEB **WILL NOT** provide work space for the Design Team. The Design Team must provide its own workspace. EWEB will negotiate with the Design Team reimbursement for travel & expenses associated with the Work.

SECTION THREE EXPERIENCE/QUALIFICATIONS OF PROPOSER

3.01

Prior Experience/Minimum Qualifications

To be considered responsive, Proposers shall provide evidence of their qualifications and demonstrated experience related to the following criteria:

3.01.1 Experience

Proposers shall have experience with designing a waterfront redevelopment master plan. In addition, the Proposers shall have had a lead role in a complex public involvement process.

- Waterfront Master Planning.

In addition to the four elements listed as "A" through "D" in section 2.01 of this RFQ, the Master Plan Design Team should possess experience in transportation planning, including circulation, parking, and alternative modes of transportation as well as an understanding of Nodal Development. The preferred candidate will have experience in masterplanning for the redevelopment of an industrial site. Experience integrating a proposed mix of uses, preserving established uses such as existing bike paths, and addressing artistic, historic, open space and wildlife habitat issues is highly desired.

- Public Involvement.

Master Plan Design Team shall possess excellent public speaking, professional publication, and graphic design/communication capabilities. Provide evidence of experience and a willingness to work in diverse environments and communities; demonstrate ability to support and incorporate individual and team initiatives; explain experience in reaching out to and engaging the public. Demonstrated capability to facilitate group processes, including techniques for community participation in design input, (ie: charettes), geographic asset mapping, and formal consensus decision making.

Current Building Assessments

The current EWEB site has a large number of buildings with a wide range of usability and suitability for repurposing or actual disposal or removal. The design team needs to be able to adequately assess these buildings to help the community agree on which ones will remain in the Riverfront Master Plan.

- Sustainable Practices.

Demonstrated experience in feasible designs that balance community, economic and environmental issues and the ability to evaluate and quantify the community, economic, and environmental implications of the resulting master plan. Optimizing energy efficiency through building orientation in the Master Plan will also be critical to long term sustainability.

- Collaboration.

The intent of this RFQ is to select a design team made up of organizations and individuals with a demonstrated spirit of collaboration and proven experience in project teamwork to assist the CAT and the community in developing a vision for the riverfront property and translating that vision into a Master Plan that has the support of the EWEB Board. The success of this project will be determined by the design team's ability to partner with other community organizations, such as the AIA, and build productive working relationships with other government agencies, such the City of Eugene.

- Graphic, written and oral communication.

Technical expertise in geographic information systems, spatial analysis, and performance modeling including traffic, pedestrian flow, etc. and the ability to express a vision graphically, orally and in writing is desired.

3.01.2 Credentials

Proposers shall possess all credentials as required by federal and state regulation to conduct the work requested. Credentials of Key Personnel shall include at a minimum, a licensed architect, a licensed Landscape Architect and a Land Use Planner. Proposers shall include in their response, resumes for each of their Key Personnel and proof of the required certifications/registrations/licenses.

3.01.2 References

Proposers shall provide a list of references who can speak to the proposed Team's experience in the areas described in Section 2.01.1. References shall be projects accomplished over the last 10 years and pertinent to the individual team members proposed for this project.

SECTION FOUR

STANDARD CONTRACT INFORMATION AND SUPPLEMENTAL CONDITIONS

4.01

Sample Personal Services Contract and Contract Approval

The attached sample Personal Services Contract is the contract document that the successful contractor will be expected to sign. Attachment A includes EWEB's standard terms and conditions. EWEB will re-negotiate only those terms and conditions that are affected by Scope of Work.

This RFQ does not, by itself, obligate EWEB. EWEB's obligation will commence when the contract is executed by EWEB and a Notice to Proceed has been provided to the successful proposer. Upon written notice to the contractor, EWEB may set a different starting date for the contract. EWEB will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to contract execution and the contract start date set by EWEB.

4.02

Supplemental Terms and Conditions

Proposed contracts, and any other forms or documents that Proposer desires to be included, as part of the Contract shall be submitted as part of the Proposal. By accepting delivery of these items, EWEB is not bound to accept them as part of the Contract. In the event EWEB determines that any such item or portion is unacceptable, the parties, at the sole option of EWEB may institute negotiations of those items that are not already covered by the requirements of the solicitation. **EWEB will not accept terms and conditions that contradict the terms and conditions found in this solicitation document.** Proposer **MUST** request additions or changes be made to the terms and conditions through the process that is described in Item 1.05, Protest of Specification/Request for Change or Clarification. **EWEB may reject the Proposal of any Proposer who refuses to accept the terms and conditions approved by EWEB with respect to these peripheral agreements.** EWEB is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract conflict arises between a supplemental term and condition included in the proposal and a term or condition of the RFQ, the term or condition of the RFQ will prevail.

4.03

Proposal as a Part of the Contract

All of this RFQ and the successful proposal may be incorporated into the contract.

4.04

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SECTION FIVE SCOPE OF WORK

5.01

Scope of Work

The successful Proposer shall provide leadership and expertise in assisting the EWEB Board of Commissioners and the CAT in a public process designed to articulate the public's vision for the redevelopment of the EWEB Riverfront property and in the creation of the EWEB Riverfront Master Plan document. The nine-member CAT is in place and is charged with making a recommendation to the EWEB Board of Commissioners on a Riverfront Master Plan document. The Board's approval of the master plan document will be required for a successful project.

5.02

Deliverables

All products developed through this process are the sole property of EWEB.

5.02.1 Public Process

The Design Team will lead the design of the public process that will provide ample opportunity for public engagement and public meetings. The Design Team will work with the CAT in capturing the community's diverse and competing visions for the site and lead the CAT and community to consensus on a single, multi-faceted vision for the EWEB Riverfront property. Potentially opening the historic Millrace is one example of conflicting visions the Master Plan Consultant and CAT will need to work through.

5.02.2 Schematic Visioning

The Design Team will need to provide graphic examples of potential visions collected from the public and elsewhere, including, but not limited to maps, drawings, models, and photos that will help the community understand and engage a common vision for the site.

5.02.3 Mixed Use Design

The Design Team must produce an economically feasible design, based on the community's vision, which will incorporate open space, riparian protection as well as mixed use re-development that includes historic and educational components, and people places that are active and vibrant. The design concept will need to be unifying.

5.02.4 Master Plan Document

The final deliverable will be a Riverfront Master Plan document that addresses the Board's objectives and relevant principles in the Downtown Plan. The Downtown Plan is available electronically at www.eugene-or.gov/downtown

The plan will have the vision articulated graphically and in writing. It will be adequate to guide the future redevelopment of the site with general site layout, circulation and design criteria but will not provide specific building designs or construction drawings for the site. The document will be drafted, reviewed by the team, the EWEB Board of Commissioners and community, modified as appropriate, then submitted to the EWEB Board of Commissioners for their approval. The document will eventually be combined with a Metro Plan Amendment and other planning documents for submittal to the City of Eugene for the Council's final approval. All documents will be delivered hard copy and electronically in formats prescribed in this document.

SECTION SIX

EVALUATION CRITERIA

Qualifications will be evaluated and scored and contract award will be based on Proposers qualifications and experience as described below:

Required Contents of Proposal

COMPLETE PROPOSALS: Proposals must be complete. Incomplete proposals cannot be considered and cannot be supplemented by submissions delivered after the closing time and date of the RFQ.

PROPOSALS SHALL INCLUDE THE FOLLOWING INFORMATION:

- **Contractual Acceptance:** Statement accepting ALL terms and conditions contained in this solicitation.
- **Response to Evaluation/Scored Criteria:** Proposals must include a complete response to all Evaluation/Scored Criteria listed in Section Six.
- **Signature pages:** At least one Proposal submitted by Proposer must bear an original signature.
- **Prior Experience:** Proposals MUST contain all requested documentation and information to establish compliance with Section 3.01, Prior Experience/**Minimum Qualifications**.
- **Hourly Rates:** PROPOSERS SHALL INCLUDE, IN THEIR RESPONSE, THE CLASSIFICATIONS AND HOURLY RATES OF ALL PROPOSED 'KEY PERSONAL'
- **Estimated Costs of Deliverables:** Based on proposer's experience, estimate number of hours needed and an estimated cost for each of the deliverables. Project estimates will be used for budgeting purposes and Board approval process. It is understood that these estimates may or may not change with the refinement of the Scope and Statement of Work. EWEB reserves the right to add or delete deliverables as necessary

ADDITIONAL REQUIRED INFORMATION:

Proposers must also provide the following information with their proposal response.

Proposer Management Information

- a) Name, address, principal place of business and telephone number of legal entity with whom contract is to be written.
- b) Legal status of Proposer and year entity was established.
- c) Federal employer ID number.
- d) Location of the facility from which Proposer would operate.
- e) Name of the person(s) in the firm who will have prime responsibility and final authority for the work (Project Manager) (NOTE: If this person is other than the Project Manager, list the name of the Project Manager AND the name of the person(s) who will have prime responsibility and final authority for the work)

- f) Proposers who employ or have on their governing boards, as of the date of their proposal, EWEB employees, or former EWEB employees, shall identify such persons and their position and responsibilities within the Proposer's organization. If, following a review of this information, it is determined by EWEB that a conflict of interest exists, the Proposer may be rejected from further consideration for the award of a contract.

Termination for Default:

Proposers shall indicate if they have had a contract terminated for default in the last five years. Termination for default is defined as notice to stop performance that was delivered to the Proposer due to the Proposer's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and determined that the Proposer was in default.

NOTE: If a Proposer has had a contract terminated for default in this period, then the Proposer shall submit full details including the other party's name, address and phone number. EWEB will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of proposers past performance.

6.01 Qualifications and Experience (100 Points Possible)

6.01.1 Project Experience: (15 points) Describe your Design Team's experience in urban waterfront master plan projects of similar scale and complexity. List no less than 1 and no more than 5 urban redesign or related projects for which the firm has had lead responsibility within the past 10 years (maximum). For each project, identify which individuals were involved and what their role was. Projects that are recent and relevant to EWEB's objectives will be given greater weight.

6.01.2 Team Experience: (15 Points) Demonstrate the Design Team's overall qualifications, abilities and recent professional experience of all individual team members with emphasis on projects of similar scale and complexity. Show demonstrated spirit of collaboration and ability to build productive working relationships with other government agencies. Indicate the Project Manager's experience in managing projects of similar scope with multi-disciplinary teams, and the management approach to assimilating, analyzing and reporting data. This criterion expresses the general and specific project related capability of the in-house staff and indicates the adequate depth and abilities of the organization, which it can draw upon as needed. Give brief resumes of key persons to be assigned to the project including, but not limited to, the following:

- a. Name and title.
- b. Job assignment for other projects.
- a. Percentage of time to be assigned full-time to this project.
- b. How many years with this firm?
- c. How many years with other firms?
- d. Experience – including types of projects, size of projects (dollar value and gross square footage), and specific project involvement.
- e. Education.
- f. Active registration(s) if any.
- g. Any other relevant information

6.01.3 Project Approach: (20 points) Provide a clearly written and well-organized approach to this complex project that demonstrates your understanding of EWEB's objectives and associated local issues. Include how you would develop a public engagement program that will help EWEB, the CAT and the community to reach consensus on a conceptual design. Describe how you would incorporate sustainable principles into the project and build collaborative partnerships.

- 6.01.4 Design Excellence: (20 points)** Demonstrate your team's ability to successfully design projects which exhibit urban master planning and/or waterfront redevelopment excellence, particularly those that blend sustainable mixed use residential/commercial development with public art, local history, celebration of the river environment, parks, open space, and interpretive displays. Describe processes used to assure that aesthetic, functional and economic viability are addressed in an integrated manner. List design awards and any other special recognition bestowed on projects, firms and/or lead individuals that demonstrate design excellence.
- 6.01.5 Project Management: (20 points)** Demonstrated ability to undertake and complete quality projects on time and within budget. Describe the lead firm's process for coordinating the work of different consultants and collaborating with outside agencies. Consideration will include staff capabilities and organizational structure necessary to meet the schedule.
- 6.01.6 Local Familiarity: (5 points)** Describe your Design Team's familiarity with and experience working in the Pacific Northwest in general and the Eugene/Springfield area in particular. Identify participation of Eugene/Springfield-based members of the Consultant Team. Describe the role of Eugene/Springfield-based firms in the project. Indicate the Design Team's familiarity with pertinent federal, state, and local code requirements. Describe your Design Team's experience with zoning changes, conditional use permits, and other land use and code-related processes, particularly those completed under the requirements of the Eugene Code.
- 6.01.7 Fee Schedule (5 points)** List rates, provide a list of the standard hourly rates for all Design Team members. Describe factors that influence the cost on this project-whether upwards or downwards-compared to an "average" project. Describe how your Design Team would bring value to the project. Define expected reimbursable costs, i.e. phone, printing, etc.

6.02 Interviews (100 Points Possible)

Note: EWEB reserves the right to waive interviews and select a successful Proposer based solely on the written Statement of Qualifications (SOQ). If EWEB decides to hold interviews, the following process will be used:

After the Design Teams have been evaluated based upon their written qualification submissions, EWEB may elect to invite the highest-ranked Proposers (as a result of SOQ scoring) to an **interview presentation**. Design teams will be required to respond to questions regarding their staff, experience, and approach to performing work on this particular project.

SECTION SEVEN

Evaluation Process

7.01 Right of Rejection

Proposers must comply with all of the terms of the RFQ, EWEB Rules, and all applicable local, state, and federal laws, administrative rules, and regulations. The Purchasing Analyst may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFQ.

Proposers may not qualify the proposal nor restrict the rights of EWEB. If a Proposer does so, the Purchasing Analyst may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

Minor informalities that:

- do not affect responsiveness,
- are merely a matter of form or format,
- do not change the relative standing or otherwise prejudice other offers,
- do not change the meaning or scope of the RFQ,
- are trivial, negligible, or immaterial in nature,
- do not reflect a material change in the work, or,
- do not constitute a substantial reservation against a requirement or provision,

may be waived by the Purchasing Analyst.

EWEB reserves the right to refrain from making an award if it determines that to be in its best interest.

A proposal from a debarred or suspended Proposer shall be rejected.

7.02 References

EWEB reserves the right to investigate any and all references and the past performance information provided in the SOQ with respect to Respondent's successful performance of similar projects, compliance with specifications and contractual obligations, completion or delivery of a project on schedule, and lawful payment of employees and workers.

EWEB reserves the right to check any and all sources for information and to include sources other than the references provided in the Proposer's response. EWEB may consider information available from any such source including government bodies and regulatory authorities in evaluating respondents.

7.03 Responsibility

EWEB reserves the right to investigate and evaluate, at any time prior to award and execution of the Contract, the apparent successful Proposer's responsibility for performing the Contract, as defined in Rule 3-0500. Submission of a signed SOQ shall constitute approval for EWEB to obtain any information EWEB deems necessary to conduct the evaluation. EWEB reserves the right to request additional information or documentation from the successful Proposer prior to award of a contract. Such information may include, but is not limited to, current and recent balance sheets, income statements, cash flow statements, or a performance bond from an acceptable surety. Failure to provide this information will result in the rescission of EWEB's Intent to Award.

EWEB may postpone the award of the Contract after announcement of the apparent successful Proposer in order to complete its investigation and evaluation. Failure of the apparent successful Proposer to demonstrate responsibility shall render the Proposer non-responsible and shall constitute grounds for rejection of the proposal.

7.04 Clarification of Response

EWEB reserves the right to request clarification of any item in any SOQ, or to request additional information necessary to properly evaluate a particular response. All requests for clarification and responses shall be in writing.

During the evaluation of Qualifications, Proposers must respond to any request for clarification from the Evaluation Committee within 24 hours of request (Monday through Friday). Inability of the Evaluation Committee to reach a Proposer for clarification and/or failure of a Proposer to respond within the time stated may result in rejection of that Proposer's Response.

7.05 Interviews / Presentations

The outcome of the Qualification evaluations *may* result in placement on an interview / presentation list (short-listed) with time and date of the interview. Should EWEB elect to hold interviews / presentations, the total points possible for the interview / presentation will be 100 points.

7.06 Contractor Selection

The firm with the highest total score as a result of written proposal scoring AND interview / presentation scoring (if required) will be awarded the contract.

7.07 Ties Among Proposers

Pursuant to Rule 4-0230, If determined after the ranking of potential firms, that two or more of them are equally qualified, EWEB may select a candidate through any process that the utility believes will result in the best value for EWEB taking into account the scope, complexity and nature of the Work. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of EWEB and Proposers and shall protect the integrity of the Public contracting process.

As part of the procedure for choosing between two or more equally qualified candidates, EWEB may follow the procedure set forth in Rule 3-0300, (Preferences for Oregon Goods and Services; Nonresident Bidders to select the firm), and may choose to give a reference to a local potential firm.

7.08 Notice of Intent to Award

After the completion of the evaluation, ranking and interviews (if required), the Purchasing Analyst will issue a written Notice of Intent to Award and send copies to all Proposers. The notice will set out the names of all Proposers and identify the Firm selected for award.

7.09 Contract Negotiation

EWEB will begin negotiating a Contract with the highest ranked Proposer as defined in Section 7.06. EWEB shall direct negotiations toward obtaining written agreement on:

- a) Contractor's performance obligations and performance schedule;
- b) Payment methodology and a maximum amount payable to Contractor for the Work required under the Contract that is fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Work.
- c) Any other provisions EWEB believes to be in the utility's best interest to negotiate.
- d) EWEB shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if EWEB and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. EWEB may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with Rule 4-0220(4)(c), until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, as determined solely by EWEB, EWEB may end the particular formal solicitation. Nothing in the rule precludes EWEB from proceeding with a new formal solicitation for the same Work described in the RFQ that failed to result in a Contract.

7.10 Protest Procedures (Rule 4-0240)

EWEB shall provide to all Proposers a copy of the selection notice that EWEB sent to the highest ranked Proposer. A Qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to EWEB. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer

because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFQ or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ.

Eligible Proposers protesting award shall follow the procedures described herein. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Proposers.

- a) Protests must be received within seven (7) days after issuance of the notice of intent to award the Contract. EWEB will not consider late protests.
- b) All protests must be in writing, signed by the protesting party or an authorized Agent and submitted to the EWEB Purchasing Analyst listed on page 1. The protest must state all facts and arguments on which the protesting party is basing the protest.
- c) Only protests stipulating an issue of fact concerning a matter of bias, discrimination or conflict of interest, non-compliance with procedures described in the procurement documents, or EWEB policy shall be considered. Protests based on procedural matters will not be considered.
- d) EWEB's Purchasing Manager will review the protest and will fax and mail the protesting party a written response within three (3) business days of receipt of the written protest to the fax number and address provided in the bid or proposal. Any written response may be comprised of a determination of the protest, a notice to the protesting party of the need for additional time in which to evaluate the matter, or other notice to the protesting party.
- e) If the Purchasing Manager's determination (response) is adverse to the protester, any further appeal of the Purchasing Manager's determination by the party must be submitted in writing to EWEB's General Manager within three (3) business days of issuance of the Purchasing Manager's determination (response).
- f) EWEB's General Manager will review any appeal of the Purchasing Manager's determination and shall fax and mail, in accordance with the fax number and address provided in the bid, the protesting party a written response within three (3) business days of receipt of written appeal.
- g) If the determination of the General Manager is adverse to the protesting party's interest, the protesting party may only appeal to EWEB's Board of Commissioners by filing a written notice of appeal to the Board with the General Manager within two (2) business days of issuance of the General Manager's written determination.
- h) The Contract Review Board, in considering the protest, shall review the documentation presented to the Purchasing Manager and the General Manager on or before the next regularly scheduled Board Meeting, but in no event shall they be required to review in less than ten (10) business days, and thereafter, base their decision on such material. The Board review will be limited to the evaluation of compliance with EWEB's policies and procedures, requirements of the RFQ or ITB and the equal and fair application of EWEB's contracting rules. The contract Review Board's determination shall be EWEB's final decision.

An adversely affected or aggrieved bidder must exhaust all avenues of administrative review procedures and relief before seeking judicial review of EWEB's Contractor selection or Contract Award decision.

SECTION EIGHT PROPOSAL FORM

RFQ Number: 032-2008

Qualifications should be prepared and organized in a clear and concise manner, and must include all information required by this RFQ. Headers, Titles or Tabs should be used to identify required information. Responses to the Evaluation Criteria shall be organized in the order listed in Section 6, preferably by re-stating the Criteria, then responding below.

THE FOLLOWING INFORMATION MUST BE RETURNED WITH YOUR RESPONSE:
(place a check in front of the item indicating inclusion in your response)

- ☐ **CONTRACTUAL ACCEPTANCE:** Statement accepting ALL terms and conditions contained in this solicitation. Statement *may* include request for negotiation of proposed terms and conditions as allowed per Section 4.01
- ☐ **TERMINATION FOR DEFAULT:** Proposers shall indicate if they have had a contract terminated for default in the last five years. (See Section 6)
- ☐ **RESPONSE TO ALL EVALUATION CRITERIA** listed in Section 6
- ☐ **SECTION 8** - Proposal Form
- ☐ **ATTACHMENT B** - Bidder Residency Information
- ☐ **ATATCHMENT D** - Independent Contractor Certification

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA TO BID DOCUMENTS:

Proposer acknowledges receipt of Addenda and agrees to be bound by the their contents.

Circle each RFP addendum received: **1, 2, 3, 4, 5, 6, 7, 8, 9, 10**

Check if not applicable or no addenda were received: _____

Estimated Costs of Deliverables (See Section 5): Based on proposer's experience, estimate number of hours needed and provide an estimated cost for each of the deliverables. Project estimates will be used for budgeting and Board approval processes. It is understood that these estimates may or may not change with the refinement of the Scope and Statement of Work. EWEB reserves the right to add or delete deliverables as necessary

Public Process	Estimated hours: _____	Estimated cost: _____
Schematic Visioning	Estimated hours: _____	Estimated cost: _____
Mixed Use Design	Estimated hours: _____	Estimated cost: _____
Master Plan Document	Estimated hours: _____	Estimated cost: _____

ASSURANCES:

The undersigned attests that:

S/he has read and understands all instructions, requirements, addenda, site conditions, and terms and conditions contained herein (including the attachments and Exhibits listed in this solicitation).

S/he has the authority and/or responsibility to submit a proposal and to bind her/his organization in all phases of this RFQ process.

The information provided is true and accurate to the best of her/his knowledge.

S/he understands that any false statement may disqualify this offer from further consideration or may be cause for contract termination.

S/he has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged minority, women or emerging small business enterprise certified under ORS 200.055.

S/he represents and warrants to EWEB that S/he has the power and authority to enter into and perform this Contract and that this Contract, when executed by EWEB, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms.

S/he has arrived at the specifics of the proposal, including price and amounts, independently and without communication or agreement with another Proposer, except as disclosed in a separately attached statement;

S/he has not directly or indirectly induced or solicited another Proposer, in order to benefit a third person, to submit a false or sham bid, to refrain from bidding or to change a bid;

S/he has not directly or indirectly disclosed the Proposer's bid price, a breakdown of the price, the contents of the price or information or data related to the price to another Proposer;

S/he has not sought through communication or agreement with a person to fix the bid price of the Proposer or another Proposer, to fix an overhead, profit or cost element of the bid price of the Proposer or another Proposer or to secure any advantage against the contracting agency or any other person interested in the public contract;

S/he has not directly or indirectly expressed an interest or lack of interest in the public contract, or paid or offered to pay a fee to a person, to cause a collusive or sham bid;

Contractor by signing this contract represents and warrants that contractor's performance under this contract creates no potential or actual conflict of interest, including but not limited to conflicts of interest as defined in ORS 244.020. Contractor further warrants that no state or federal law or EWEB rule prevents contractor's lawful performance of the contract. If contractor is currently performing work for EWEB or another governmental entity, Contractor's participation in other public contracts does not create a potential or actual conflict of interest in performance of this contract.

PROPOSER INFORMATION:

Company Name

Company Address

Telephone Number

Fax Number

FEDERAL ID NUMBER

Person Signing RFQ _____ Title _____
Please print or type Name

Signature: _____

Email Address: _____

(This Section to be completed by EWEB)

The RFQ [including all Attachments and Exhibits], any and all addenda, all EWEB contractual terms and conditions, and the Proposers offer (interpreted in the provided order of precedence) become the final contract once executed by the EWEB

Purchasing & Risk Manager (in the space provided below) and constitute the entire agreement between the parties, and thereafter, upon EWEB's issuance of a Notice to Proceed, additional amendments and/or change orders may be added to the contract as mutually agreed upon by the parties.

The Eugene Water and Electric Board (EWEB) hereby awards a contract to the above Proposer for the item(s) and/or service(s) designated on the bid invitation as:

Provide Master Planning and Public Engagement Services to include Urban design, public involvement and land planning for the EWEB Riverfront Master Plan per the negotiated Statement of Work (Attachment 1) and Fee Schedule (Attachment 2) in accordance with all requirements, Terms and Conditions of RFQ #032-2008

Contract Administrator	Date
------------------------	------

Supervisor / Division Director (if required)	Date
--	------

Purchasing / Risk Manager	Date
---------------------------	------

Term of Contract: _____

PO No. _____

JOB No. _____

PURCHASE ORDER No. _____



**Personal Services Contract
Architectural & Engineering Services**

Contract Description

PSC No. _____

By and between
Eugene Water & Electric Board
and
Contractor

This Contract is entered into by and between the **Eugene Water & Electric Board**, hereinafter called EWEB, and _____, hereafter called Contractor.

WHEREAS, EWEB has need for the services of an independent contractor with the particular training, knowledge, and experience offered by the Contractor; and

WHEREAS, EWEB has negotiated the following agreement in Eugene, Oregon, and Contractor has agreed to deliver its services in Eugene, Oregon;

NOW THEREFORE, in consideration of a sum agreed to by the Parties, the Contractor agrees to perform the services as described in this Contract, in accordance with all requirements, terms and conditions of this contract, as set forth below:

1. Effective Date and Duration.

- a. This Contract shall become effective on the date this Contract has been signed by every party hereto and, when executed by EWEB's Purchasing/Risk Manager. Unless terminated or extended, this Contract shall expire when EWEB accepts Contractor's performance, or on _____, **200**_____ whichever date occurs first. Expiration shall not extinguish or prejudice EWEB's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.
- b. This Agreement may be renewed for additional period(s), in accordance with EWEB Rule 4-0310, subject to agreement by the Parties, at least thirty (30) days prior to the expiration of the initial term, on the term and price of the services hereunder. The maximum term for this Agreement shall not exceed five (5) years.

2. Statement of Work.

The statement of work (the "Work"), including the delivery schedule for such Work, is contained in Attachment E attached and incorporated by reference into this Contract.

3. Consideration & Payments.

- a. The maximum, not-to-exceed compensation payable to Contractor under this Contract (as established in the Fee Schedule, Attachment F), which includes any allowable expenses, is \$_____.
- b. Interim payments to Contractor shall be made according to the following:
Invoices shall be submitted to EWEB's Contract Administrator for this Contract. EWEB's Contract Administrator is Mark Oberle.

The cost of the Work or Contractor services shall be determined by multiplying the number of Contractor hours for each Contractor employee multiplied by the applicable hourly billing rate identified in the Contract for that employee. The Contract establishes an estimated number of hours for Contractor to complete, and a total number of hours within which Contractor must complete all Work described in the Statement of Work. Contractor agrees that it is responsible for (a) performing the Work without exceeding the total number of hours allocated for the Work, and for (b) completing all work identified in the Statement of Work without exceeding the maximum not-to-exceed compensation stated in the Contract. If Contractor expends the total hours allocated for the Work in the Statement of Work, and expends the maximum not-to-exceed compensation stated in the Contract, but the Work is not complete or is not satisfactory, Contractor is responsible to complete the Work to EWEB's satisfaction without further compensation.

If the maximum compensation is expended before the project is complete, Contractor agrees to perform all necessary Work to complete the project and to deliver the required deliverables without additional compensation.

Contractor shall not submit invoices for, and EWEB shall not pay any amount in excess of the maximum not-to-exceed compensation stated in the Contract. If this maximum amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. No payment will be made for any work performed or Deliverables, Developments or Work Products delivered before the beginning date or after the expiration date of this Contract, as it may be amended from time to time in accordance with its terms.

EWEB shall pay Contractor not more than once per month upon Contractor's submission of a sufficiently detailed invoice for Work performed and Deliverables, Developments or Work Products delivered to EWEB during that month. Such invoices shall describe all Work performed or Deliverables, Developments or Work Products delivered with particularity and by whom it was performed, including name and job title and reference to the specific work activity. All invoices shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount invoiced to date by Contractor prior to the current invoice. EWEB will have the right to review each such invoice for compliance with the requirements and any other pertinent provisions of this Contract. If Contractor uses a billing agent, responsibility for billing errors remains with Contractor.

EWEB will make payment in accordance with its regular payment schedule; Net 30 days from receipt of a valid, undisputed invoice.

4. Reserved.

5. Key Persons.

Contractor acknowledges and agrees that a significant reason EWEB is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, EWEB is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless EWEB provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide EWEB with such Key Person's services unless EWEB provides prior written consent to such reassignment or transfer.

In the event Contractor requests EWEB to consent to a delegation, reassignment, transfer or other replacement of a Key Person, EWEB may interview and review the qualifications of the proposed substitute personnel before providing its consent or rejecting such replacement. Any such replacement shall have substantially equivalent or better qualifications than the Key Person being replaced. Contractor shall not charge EWEB and EWEB shall not pay for any proposed replacement personnel while such replacement acquires the necessary skills and project knowledge to proceed with the services required hereunder. Any replacement personnel approved by EWEB shall thereafter be deemed a Key Person for purposes of this Contract and the Contract shall be deemed amended to include such Key Person.

Contractor shall provide adequate staff to complete the Work and the Deliverables, Developments and Work Products in accordance with the delivery schedules set forth in the Statement of Work, as it is amended from time to time. In the event that a Key Person or other employee of Contractor shall be subsequently found to be unacceptable to EWEB, EWEB shall notify Contractor of such fact

and Contractor shall immediately remove such employee from all responsibilities hereunder. Contractor shall provide a replacement acceptable to EWEB within three (3) business days of receipt of EWEB's notice provided under this Section 5. The provisions of this Section 5. shall be applicable to the replacement of a Key Person. At EWEB's sole discretion, EWEB may elect to terminate this Contract pursuant to the terms found in Attachment A, if Contractor is unable to provide a replacement acceptable to EWEB.

6. Inspection & Modification - Reimbursement for Unacceptable Deliverables.

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the Contract Administrator. EWEB may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. Should the Contract Administrator determine that corrections or modifications are necessary in order to accomplish its intent, the Contract Administrator may direct the Contractor to make such changes. The Contractor will not unreasonably withhold such changes.

Substantial failure of the Contractor to perform the contract may cause EWEB to terminate the contract. In this event, EWEB may require the Contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

7. Deficiencies.

If EWEB determines that any deliverables are not acceptable and that any deficiencies are the responsibility of the Contractor, EWEB shall prepare a detailed written description of any deficiencies and an associated time frame for correction, and deliver such notice to Contractor. Contractor shall correct any deficiencies at no cost to EWEB. If the corrective work causes any project delays, the Contractor will submit a plan for regaining the project schedule for remaining work under the Contract, unless otherwise allowed by EWEB. If EWEB determines the Contract schedule must be modified, a contract amendment will be initiated. If the identified deficiencies have not been corrected within the specified timeline, EWEB may: (i) terminate this Contract without payment or any further obligation or liability of any kind; or (ii) require Contractor to continue to correct the deficiencies, reserving this same right to terminate at any time

8. Deliverable Review & Approval.

- a. Each Deliverable provided by Contractor shall be reviewed by the EWEB Contract Administrator for compliance with the Statement of Work. The EWEB Project Manager shall review the Deliverable within ten (10) business days of receipt and shall promptly notify Contractor of their approval or rejection.
- b. If any Deliverable fails to conform to the Statement of Work, EWEB will, in its notification, specify the manner in which it fails to comply. Upon receipt of such written notice, Contractor will correct any such failures within five (5) business days from the date of receipt of EWEB's notice or such date as EWEB shall specify in its notice, and shall resubmit the Deliverable to the EWEB Contract Administrator for re-evaluation, all at no additional charge to EWEB.

Thereafter, if the Deliverable fails to conform as required, EWEB may allow Contractor an additional opportunity to correct the Deliverable, again at no additional charge to EWEB.

- c. When EWEB determines that all Deliverables conform in accordance with the Statement of Work; then EWEB shall notify Contractor that Final Acceptance of all Deliverables has occurred.

Contractor agrees to make any changes required to conform the deliverables to the requirements of the Statement of Work, including changes to previously accepted Deliverables that are required due to changes to the Deliverables then under review.

9. Working Drawings

The Contractor will prepare and supply EWEB with a complete set of working drawings for use in construction. Drawings shall be transmitted to the Contract Administrator for review before commencement of construction. Both digital files and hard-copies shall be submitted for review. Materials shall not be furnished or fabricated nor any work done before the drawings are approved. Unless otherwise stated in writing, drawings will be revised "As-Built" by the Contractor following the completion of work and resubmitted as both digital files and full-size hard-copies which will be stamped and signed by the responsible engineer.

Drawings created for EWEB as part of this contract shall be furnished to EWEB in the latest version of AutoCAD® available to the Contractor, or in the .DXF format. All drawings shall conform to EWEB standards as outlined in the GeoGraphics Drafting & Mapping Standards that are provided on request by the Contract Administrator, or the Project Manager as a .ZIP file. Sample drawings are also included. The Contractor may contact EWEB's GeoGraphics Supervisor directly at (541) 341-8513 for questions about the standards files.

On first submittal Contract Administrator will review the working drawings and note any required changes. GeoGraphics will review the drawing with regard to conformity with EWEB standards. Drawings will be processed and returned within 14 calendar days of receipt by the Contract Administrator. If the drawings are not returned within 14 calendar days, the Contract Administrator may grant an extension of the contract time equal to any delay in work caused by the excess review time.

The Contract Administrator's review will not relieve the contractor of any responsibilities under the contract. The Contractor shall be responsible for correcting errors or omissions in the drawings and deviations from the specified work unless such errors, omissions, or deviations were specifically called to the attention of, and approved by, the Contract Administrator. The Contractor is responsible for the correctness of the drawings, shop fits, and field connections, and the results obtained by use of such drawings.

10. Confidentiality / Non-Disclosure.

- a. Confidential Information. Contractor acknowledges that it and its employees or agents may, in the course of performing its responsibilities under this Contract, be exposed to or acquire information that is confidential to EWEB or EWEB's clients. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed to be confidential information of EWEB ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is furnished by EWEB to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; or (d) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.
- b. Non-Disclosure. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of services to EWEB hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

- c. Unauthorized Use. Contractor shall use its best efforts to assist EWEB in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise EWEB immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Contractor will at its expense cooperate with EWEB in seeking injunctive or other equitable relief in the name of EWEB or Contractor against any such person.
- d. Return of Confidential Information. Contractor agrees that, except as directed by EWEB, Contractor will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Contract or at EWEB's request, Contractor will turn over to EWEB all documents, papers, and other matter in Contractor's possession which embody Confidential Information.
- e. Injunctive Relief. Contractor acknowledges that breach of this Section 10, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to EWEB inadequately compensable in damages. Accordingly, EWEB may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of EWEB and are reasonable in scope and content.
- f. Ensuring Confidentiality. Contractor agrees to comply with all reasonable requests by EWEB to ensure the confidentiality and nondisclosure of the Confidential Information, including without limitation (a) obtaining nondisclosure agreements, in a form approved by EWEB, from each of Contractor's employees and agents who are performing Work, and providing copies of such agreements to EWEB, and (b) performing criminal background checks on each of Contractor's employees and agents who are performing Work, and providing a copy of the results to EWEB.

11. Independent Contractor; Responsibility for Taxes and Withholding

- a. Contractor shall perform all required Work as an independent contractor. Although EWEB reserves the right (i) to determine the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, EWEB cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- b. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, EWEB will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual
- c. Contractor is not an "officer", "employee", or "agent" of EWEB, as those terms are used in ORS 30.265.

12. Ownership of Work / Work Made for Hire

- a. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of EWEB. EWEB and Contractor intend that such Work Product be deemed "work made for hire" of which EWEB shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire", Contractor hereby irrevocably assigns to EWEB all of its right,

title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as EWEB may reasonably request in order to fully vest such rights in EWEB. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

- b. To the extent permitted by the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.397, the Contractor shall be released, indemnified, and held harmless by EWEB from liability arising out of re-use or alteration by EWEB, which was not specifically contemplated and agreed to by the parties.
- c. Contractor, despite other conditions of this provision, shall have the right to utilize the work product on its brochures or other literature that it may utilize for its sales and, in addition, unless specifically otherwise exempted, the Contractor may use standard line drawings, specifications and calculations on other, unrelated projects.

13. Insurance

Contractor shall provide certificates of insurance as described below:

- a. **Certificates of Insurance.** As evidence of the insurance coverage required by this contract, the Contractor shall furnish Certificate(s) of insurance to the EWEB Purchasing Department, before final award can be authorized. The insurance coverage required under this contract shall be obtained from acceptable insurance companies or entities. The contractor shall be financially responsible for all deductibles, self-insured retention and/or self-insurance included hereunder.
- b. **Comprehensive Commercial / General Liability.** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this contract and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000, when applicable. Each annual aggregate limit shall not be less than \$1,000,000, when applicable.
- c. **Automobile Liability.** Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Automobile Liability Insurance. This coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent.
- d. **Workers' Compensation.** All subject employers working under this contract are either employers that will comply with ORS 656.017 which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers, or employers that are exempt under ORS 656.126. [2003 c.794 §76c]
- e. **Indemnification (Except for Errors and Omissions).** Contractor shall defend, save, hold harmless, and indemnify EWEB, its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract.
- f. **Additional Insured.** The liability insurance coverage, except Professional Liability, if included, required for performance of the contract shall include EWEB, its divisions, officers, and

employees as Additional Insured but only with respect to the Contractor's activities to be performed under this contract.

- g. Notice of Cancellation or Change.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverage(s) without 30 days' written notice from the Contractor or its insurer(s) to EWEB, Purchasing department. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided to the EWEB, its department, officers, and employees.
- h. Professional Liability insurance (Errors and Omissions).** with a minimum single limit of \$1,000,000 to cover claims arising out of Contractor's professional services hereunder. This policy shall be maintained for a minimum of one (1) year after EWEB's acceptance of Contractor's work.
- i. Indemnification (Claims for Professional Liability).**
Contractor shall defend, save and hold harmless EWEB, its officers, employees, and agents from all claims, suits or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and subcontractors, agents or employees in performance of professional services under this agreement.

14. Professional Registration.

a. ORS 672.020 Practice of engineering without registration prohibited; seal required.

- (1) In order to safeguard life, health and property, no person shall practice or offer to practice engineering in this state unless the person is registered and has a valid certificate to practice engineering issued under ORS 672.002 to 672.325.
- (2) Each registered professional engineer shall, upon registration, obtain a seal of the design authorized by the State Board of Examiners for Engineering and Land Surveying. Every final document including drawings, specifications, designs, reports, narratives, maps and plans issued by a registrant shall be stamped with the seal and signed by the registrant. The signature and stamp of a registrant constitute a certification that the document was prepared by the registrant or under the supervision and control of the registrant. [Amended by 1971 c.751 §6; 1995 c.33 §2; 1995 c.79 §339; 1997 c.210 §3]

b. 672.025 Practice of land surveying without registration prohibited; seal required.

- (1) No person shall practice land surveying in this state unless the person is registered and has a valid certificate to practice land surveying issued under ORS 672.002 to 672.325.
- (2) Every registered professional land surveyor shall, upon registration, obtain a seal of the design authorized by the State Board of Examiners for Engineering and Land Surveying. Every final document including drawings, specifications, designs, reports, narratives, maps and plans issued by a registrant shall be stamped with the seal of and signed by the registrant. The signature and stamp of a registrant constitute a certification that the document was prepared by the registrant or under the registrant's supervision and control.
- (3) Notwithstanding the provisions of ORS 672.005 (1), a registered professional engineer not also registered as a professional land surveyor shall not establish, reestablish or restore land boundaries, corners or monuments between lands not held in common ownership or intended for conveyance. [Formerly 672.420; 1977 c.620 §2; 1979 c.817 §1; 1981 c.159 §1; 1995 c.33 §3; 1997 c.210 §4]

15. EWEB Contacts.

Following are EWEB's contacts for this contract:

Contract Administrator: Mark Oberle, 541-484-2411 Ext 3230
Purchasing Coordinator: Gail Murray, 541-434-5754

16. Contract Documents.

This Contract consists of the following documents, hereby incorporated by reference, which are listed in descending order of precedence: this Contract less all attachments and exhibits, attached Attachment A, Attachment B, Attachment D, Attachment E, and Attachment F. (Attachment C does not apply to this contract).

This Contract and the attached Attachments and Exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

17. Assurances:

The undersigned attests that:

S/he represents and warrants to EWEB that S/he has the power and authority to enter into and perform this Contract and that this Contract, when executed by EWEB, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms.

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

CONTRACTOR:

Firm Name

Firm Address

Telephone Number

Fax Number

FEDERAL ID NUMBER

OSBEELS / ORBAE / OSBGE No.(s)

(provide name(s), title(s), and certification number(s) for each employee as required under. Attach additional sheet if necessary)

Name: _____ Title: _____ Certification No: _____

Name: _____ Title: _____ Certification No: _____

Name: _____ Title: _____ Certification No: _____

Name: _____ Title: _____ Certification No: _____

Person Signing Contract (Please print or type Name) Title _____

Signature: _____

Email Address: _____

EXECUTION

EWEB:

Contract Administrator Date

Supervisor / Division Director (if required) Date

Purchasing / Risk Manager Date

ATTACHMENT A

STANDARD TERMS & CONDITIONS FOR THE PURCHASE OF SERVICES

A.1 DEFINITIONS:

“Architect” means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms “architect,” “licensed architect,” and “registered architect.” (See ORS 279C.100(1))

“Architectural, engineering and land surveying services” or “Architectural, engineering or land surveying services” means professional services that are required to be performed by an architect, engineer or land surveyor. (See ORS 279C.100(2))

“Consultant,” for purposes of EWEB Rules, Division 4, means an architect, engineer, land surveyor, or provider of related services. A Consultant includes a business entity that employs Architects, Engineers, Land Surveyors, or providers of related services, or any combination of the foregoing. (See ORS 279C.115(1))

“Contract” or **“Contracts”** means the Written agreement(s), resulting from the Solicitation Document that sets forth the rights and obligations of the parties.

“Contractor” means the Person with whom EWEB enters into a Contract.

“Engineer” means a person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2). (See ORS 279C.100(3))

“Goods and services” or “Goods or services” means supplies, equipment, materials and services other than personal services designated under ORS 279A.055 and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that EWEB or another contracting agency is authorized by law to procure. “Goods and services” or “Goods or services” includes combinations of any of the items identified in this Rule. (See ORS 279B.005(1)(b))

“Person” means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a public body.

“Personal services” mean the services of a person or persons that are designated by the Board as personal services, and includes architectural, engineering and land surveying services, and related services, for purposes of EWEB Rules, Division 4. (See ORS 279C.100(5))

“Personal Services Contract” or “Contract for Personal Services,” for purposes of EWEB Rules, Division 3, means a contract, or member of a class of contracts, other than a contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services, and other than a contract for services not designated by the Board as personal services (see EWEB Rules, Division 6), whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a contract for the services of an accountant, physician or dentist, educator, information technology consultant, broadcaster, artist (including a photographer, filmmaker, painter, weaver or sculptor), or consultant (excluding an Architect, Engineer, Land Surveyor, or Provider of Related Services).

“Rule” means a Rule within the EWEB Public Contracting Rules.

“Work” means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all duties and obligations imposed by the Contract.

“Working hours” means EWEB’s regular business hours, which currently are Monday through Friday, 9 a.m. to 5 p.m., excluding EWEB recognized holidays.

All other terms not expressly identified above shall have the meanings as set forth in EWEB Public Contracting Rules, Division 1 - Definitions.

A.2 HEADINGS:

The section headings in this Contract are included for convenience only; they do not give full notice of any portion of the terms of this Contract.

If these Terms and Conditions are attached to a Request for Proposals (RFP) solicitation, then "ITB", whenever stated herein, shall mean "RFP".

A.3 STANDARD AND SPECIAL TERMS AND CONDITIONS: ORDER OF PRECEDENCE:

These printed Terms and Conditions are the Standard Terms and Conditions for EWEB contracts for the purchase of Services. EWEB may also provide "Special Terms and Conditions" elsewhere in the Contract which apply only to this Contract. Whenever possible, all terms and conditions are to be harmonized. In the event of a conflict between the standard and "special terms and conditions", the "special terms and conditions" take precedence, unless the standard term(s) in question is/are required by law. In the event of any other conflict, 1) the special terms and conditions, 2) these Standard Terms and Conditions, 3) the Invitation to Bid or Request for Proposal, and 4) the bid or response thereto shall be interpreted in the foregoing order of precedence. By signing this Contract, Contractor agrees that, in the event of a conflict, all the terms and conditions of this Contract supersedes all preprinted terms and conditions on any forms used by the Contractor.

A.4 INDEPENDENT CONTRACTOR:

Any service or services to be rendered by Contractor under this Contract are those of an independent contractor. Contractor, its Subcontractors, Agents, Officers or Representatives are not officers, employee, or agents of EWEB as those terms are used in ORS 30.265. Contractor is responsible for all federal and state taxes or other payments or withholdings applicable to compensation or payments paid to Contractor under this Contract.

A.5 CONTRACTOR REPRESENTATIONS:

Contractor represents to EWEB that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered shall be a valid and binding obligation of Contractor, enforceable in accordance with its terms, (3) the Work under this Contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of that profession under similar conditions and circumstances, (4) Contractor shall, at all times during the term of this Contract be duly licensed to perform the Work, and if there is no licensing requirement for the profession or work, be duly qualified and professionally competent.

A.6 SECURITY OF DOCUMENTS AND PROPERTY:

All EWEB property, materials and documents and all personal property of EWEB employees are to be left undisturbed and are not to be handled, read or otherwise used by Contractor or Contractor's employees, except to the extent required by the Contract. Contractor shall consider all documents confidential. Any disclosure of confidential information or removal of EWEB property by Contractor or Contractor's employees shall be cause for immediate contract termination. Any liability, including but not limited to, attorney fees, arising from any action or suit brought against EWEB because of Contractor's willful or negligent release of information, documents or property shall be borne by Contractor.

A.7 COMMENCEMENT OF WORK:

Contractor shall commence no work under this contract until all insurance requirements have been met and a Purchase Order or Notice to Proceed has been issued by EWEB.

A.8 NON INTERFERENCE WITH WORK SITE: Contractor shall perform its work activities in such a manner that they will not interfere with the normal work activities of EWEB. Contractor shall not block access to any work areas, and shall maintain a safe passage for normal EWEB business activities.

A.9 NOTICE:

Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or EWEB at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against EWEB, such facsimile transmission shall be confirmed by telephone notice to the EWEB's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

A.10 INVOICING AND PAYMENT:

Contractor shall invoice at the expiration of each month for services performed during that month. Invoices shall include itemization of all work performed during the billing period. EWEB reserves the right to withhold payment for services not performed. EWEB will make payment to Contractor for undisputed amounts in accordance with its regular payment terms: Net 30 days after acceptance of services and receipt of a valid invoice.

A.11 SAFETY AND HEALTH REQUIREMENTS:

Contractor warrants goods and services provided under this Contract comply with all applicable federal Occupational Safety and Health Administration (OSHA) requirements and with all applicable Oregon safety and health requirements, including those of the State Workers' Compensation Division. Contractor shall take every precaution to instruct employees about and otherwise safeguard them against any possible injuries associated with chemicals or equipment as well as other potential hazards within the facility.

A.12 HAZARD COMMUNICATION:

Products which contain hazardous chemicals, as defined by Oregon Administrative Rules Chapter 437, must be labeled, tagged or marked with the following information:

- 1) Identity of the hazardous chemical(s);
- 2) Appropriate hazard warning; and
- 3) Name and address of the chemical manufacturer, importer or other responsible party.

The Contractor shall keep Material Safety Data Sheets (MSDS) on file at the location where such chemicals are stored, as required by OAR 437-155-025, for the products listed above.

A.13 EWEB PAYMENT OF CONTRACTOR CLAIMS:

a. Contractor shall make payment promptly, as due, to all persons supplying Contractor labor, equipment or material for work under this Contract; pay all contributions or amounts due the Industrial Accident Fund from Contractor or any subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against EWEB on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.0167.

b. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, EWEB may, but is not obligated to pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of this Contract. The payment of a claim under this section shall not relieve Contractor or Contractor's surety from any obligation with respect to any unpaid claims. ORS 279B.220.

A.14 PAYMENT FOR MEDICAL CARE:

Contractor agrees to make payment promptly, as due, to any person, copartnership, association or corporation furnishing medical, surgical, hospital or other needed medical care to Contractor's employees. Such payment shall be made from all sums which Contractor has agreed to pay for such services and from all sums which Contractor has collected or deducted from the wage of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

All subject employers working under this contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

A.15 PERFORMANCE:

Contractor shall perform all services required by this contract within the time specified in this contract, including extensions. All services shall be performed in highest professional manner, and in accordance with the utmost industry standards. Unless the means or methods of performing a task is specified elsewhere in this contract, Contractor shall employ methods that are generally accepted and used by the industry. Failure to meet the performance requirements of this contract shall constitute breach of contract. EWEB, by written notice to Contractor, may cancel the whole or any part of this contract:

- a. If Contractor fails to provide the services required by this contract within the time specified, or fails to perform any other provision of this contract; and
- b. If Contractor, after receipt of written notice from EWEB, fails to correct such failures within the number of days specified in the written notice.

The rights and remedies of EWEB provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

A.16 EARLY TERMINATION:

This Contract may be terminated as follows:

- a. EWEB and Contractor, by mutual written agreement, may terminate this Contract at any time.
- b. EWEB in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.
- c. EWEB's Right to Terminate For Cause.
EWEB may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as EWEB may establish in such notice, upon the occurrence of any of the following events:
 - (i) EWEB fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;

- (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited or EWEB is prohibited from paying for such Work from the planned funding source;
 - (iii) Contractor no longer holds any license or certificate that is required to perform the Work
 - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 15 business days after delivery of EWEB's notice, or such longer period as EWEB may specify in such notice.
- d. Contractor's Right to Terminate for Cause.
- (i) If EWEB fails to pay Contractor pursuant to the terms of this Contract, Contractor may terminate this Contract by giving notice to EWEB, and EWEB fails to cure within 15 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice. EWEB shall pay Contractor for all work performed in accordance with the terms of the Contract prior to termination date, if Contractor is not otherwise in default.
 - (ii) Contractor may terminate this Contract, for reasons other than nonpayment, if EWEB commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Contractor's performance under this Contract, and such breach, default or failure is not cured within 15 business days after delivery of Contractor's notice, or such longer period as Contractor may specify in such notice."

A.17 PAYMENT ON EARLY TERMINATION:

Upon termination pursuant to paragraph A.16, payment shall be made as follows:

- a. If terminated under A.16a or A.16b for the convenience of EWEB, EWEB shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. EWEB shall not be liable for direct, indirect or consequential damages. Termination shall not result in a waiver of any other claim EWEB may have against Contractor.
- b. If terminated under A.16c by the Contractor due to a breach by EWEB, then EWEB shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract.
- c. If terminated under A.16c or A.16d by EWEB due to a breach by the Contractor, then EWEB shall pay the Contractor for work performed prior to the termination date provided such work was performed in accordance with the Contract less any setoff to which EWEB is entitled.

A.18 REMEDIES:

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

- a. If terminated under A.16c by EWEB due to a breach by the Contractor, EWEB 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 the Contractor shall pay to EWEB the amount of the reasonable excess.
- b. In addition to the remedies in paragraphs A.16 and A.17 for a breach by the Contractor, EWEB also shall be entitled to any other equitable and legal remedies that are available.
- c. If EWEB breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

A.19 HOURS OF LABOR:

Contractor shall pay employees for overtime work performed under the public contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

A.20 RECYCLABLE PRODUCTS:

Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the Contract work set forth in this document. Contractor shall specify the minimum percentage of recycled product in the goods provided under this Contract. Contractor agrees to abide by all covenants contained in ORS 279B.270, which is incorporated by reference.

A.21 TIME IS OF THE ESSENCE:

Time is of the essence in the performance of this Contract.

A.22 FORCE MAJEURE:

Unless this contract is executed to remedy an act(s), occurrence(s), or event(s) stated herein, neither Party shall be liable for delays in the execution of its obligations due to causes beyond its reasonable control including but not limited to acts of God, fires, strikes, labor disturbances, floods, epidemics, quarantine restrictions, war, insurrection or riot, acts of a civil or military authority, compliance with priority orders or preference ratings issued by the federal Government, acts of Government authorities with respect to revocation of export or re-export

permits/licenses, wrecks, or unusually severe weather. The Party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

In the event of any such delay, the required date of services will be extended for a period of time equal to the period of the delay, or as short a period as is reasonably possible.

EWEB may terminate this Contract upon written notice after reasonably determining that such delay or default will likely prevent successful performance of this Contract.

A.23 LIMITATION OF LIABILITIES:

NEITHER PARTY SHALL 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

A.24 SUBCONTRACTS AND ASSIGNMENT:

Contractor shall not subcontract any of the work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of EWEB. No such written approval shall relieve Contractor of any obligations under this Contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to EWEB under the Contract as if no such transfer or subcontract had occurred.

A.25 SUCCESSORS IN INTEREST:

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

A.26 NO THIRD PARTY BENEFICIARIES:

EWEB and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

A.27 FOREIGN CONTRACTOR:

If the Contract includes services and the amount of those services exceeds \$10,000 and if Contractor is not domiciled in or registered to do business in the state of Oregon, Contractor shall promptly provide the Oregon Department of Revenue all information required by that Department relative to this Contract. EWEB may withhold final payment under this Contract until Contractor has met this requirement.

A.28 ACCESS TO RECORDS:

Contractor shall maintain fiscal records and all other records **pertinent to this Contract**. Records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken in the provision of the products required herein. All such records shall be retained and kept accessible for at least three years following final payment. EWEB's authorized representatives shall have the right to direct access to documents, papers and records **related to this Contract** for the purpose of conducting audits and examinations and making copies, excerpts and transcripts. EWEB shall reimburse Contractor for Contractor's cost of preparing copies.

A.29 COMPLIANCE WITH APPLICABLE LAW:

Contractor shall comply with all federal, state, and local laws applicable to the work under this Contract, and all regulations and administrative rules established pursuant to those laws.

Contractor shall maintain in effect all licenses, permits and certifications required for the performance of the work. Contractor shall notify EWEB immediately if any license, permit, or certification required for performance of this Contract ceases to be in effect for any reason.

A.30 WAIVER:

Waiver of any default under this Contract by EWEB shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

A.31 GOVERNING LAW:

The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon and ordinances of Lane County, Oregon. Any legal action involving any question arising under this Contract must be brought in Lane County, Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.

A.32 SEVERABILITY:

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

A.33 ANTI-DISCRIMINATION:

Contractor shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits or employment. Contractor shall not discriminate against minority-owned, women-owned or emerging small businesses.

A.34 EQUAL OPPORTUNITY EMPLOYER:

EWEB is an Equal Employment Opportunity and Affirmative Action employer and requires contractors and their subcontractors to follow EEO/AA practices in their performance of this Contract.

A.35 NON-APPROPRIATION CLAUSE:

If payment for work under this Contract extends into EWEB's next fiscal year, EWEB's obligation to pay for such work is subject to approval of future appropriations to fund this Contract by the EWEB Board of Commissioners. If such future appropriations are not approved, EWEB shall terminate the contract and pay Contractor for work performed in accordance with paragraph's A.17 and A18.

A.36 TAXES:

EWEB is a tax-exempt municipal corporation.
TIN #93-6001482; Tax exempt #93-880393K.

A.37 COOPERATIVE PURCHASING:

Other public agencies may utilize the results of this solicitation in accordance with ORS 279A.215 and Rule 2-0210. If utilized, EWEB assumes no liability or responsibilities for the actions of the utilizing parties, or as may pertain to the resulting contract established by and between the utilizing agency and the Contractor. The utilizing agency and the Contractor assume full responsibility for any and all agreements established between the parties.

ATTACHMENT B BIDDER RESIDENCY INFORMATION

ORS 279A.120 states, "For the purposes of awarding a public contract, a contracting agency shall":

(a) Give preference to goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal; and

(b) Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.

"Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" under this paragraph.

"Non-resident Bidder" means a Bidder who is not a "resident Bidder" as defined above

a. CHECK ONE: Bidder is a () RESIDENT Bidder () NON-RESIDENT Bidder.

b. If resident Bidder, enter your Oregon business address: (physical and mailing address)

c. If a non-resident Bidder, enter state of residency:

d. If a non-resident Bidder, do you or your Company receive, or are you or your Company eligible for any preference in award of contracts with your state's government or with other governmental bodies in your state?

CHECK ONE: () YES () NO

If YES, state the preference percentage: _____%

If YES, but not a percentage of bid price, describe the preference:

If YES, state the law or regulation that allows the preference described (legal citation):

ATTACHMENT D

CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

Business Designation: Contractor is a Corporation ☐ **OR (check one & complete form):**

☐ Professional Corporation ☐ Partnership ☐ Limited Partnership ☐ Limited Liability Company
☐ Limited Liability Partnership ☐ Sole Proprietorship ☐ Other

A. CONTRACTOR IS INDEPENDENT CONTRACTOR.

Contractor certifies he/she meets the following standards:

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following if you are not a Corporation:)**
 - ☐ A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
 - ☐ B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership;
 - ☐ C. Telephone listing is used for the business that is separate from the personal residence listing.
 - ☐ D. Labor or services are performed only pursuant to written contracts.
 - ☐ E. Labor or services are performed for two or more different persons within a period of one year.
 - ☐ F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____ Date _____

Firm Name: _____

(EWEB completes B below when Contractor completes Section A above.)

B. EWEB APPROVAL.

ORS 670.600. Independent Contractor standards. As used in various provisions of ORS chapters 316, 656, 657 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. EWEB certifies the contracted work meets the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. The Contractor furnishes the tools or equipment necessary for the contracted labor or services.
4. The Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.

EWEB Signature _____

Date _____

