

**City of Sweet Home
Professional Services Contract**

This Contract is by and between the City of Sweet Home (“City”) and Ashley and Vance Engineering, Inc. (“Consultant”) for the Sakey Park Phase III Engineering Design project.

A. RECITALS

City has conducted a formal solicitation for proposals from qualified firms pursuant to Public Contracting law.

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

City has awarded the contract to Consultant.

B. CONTRACT EXHIBITS

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

- Exhibit A – Scope of Work
- Exhibit B – Oregon Personal Services Public Contracting Code Requirements
- Exhibit C – Request for Proposal
- Exhibit D – Consultant’s Proposal
- Exhibit E – Consultant’s Schedule of Rates and Charges

C. AGREEMENT

1. Term

The term of this Contract shall be from its execution to completion of the project.

2. Scope of Work

Consultant shall provide all services and deliver all materials as specified in the attached Exhibits A, C and D, which are hereby incorporated into this Contract by this reference, and as may be described by future addenda to this Contract.

3. Compensation

3.1 Compensation. For the services described and performed by Consultant, the City agrees to pay, and the Consultant agrees to accept, compensation in accordance with the Schedule of Rates and Charges, attached within Exhibit E.

3.2 Invoices. Invoices for services of Consultant shall be billed to the City in summary form, itemized by projects and/or work tasks, on or about the first day of each month for all services performed through the last day of the previous month. Reimbursable expenses shall be itemized and backup invoices provided if required by City.

3.3 Payments.

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

4. Contractor Is an Independent Contractor

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

5. Notices

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

City: Community & Economic
Development Department
City of Sweet Home
3225 Main Street
Sweet Home, OR 97386

Phone: (541) 367-6359
Fax: (541) 367-7592

Consultant: _____

Phone: _____
Fax: _____

6. Indemnification

Consultant shall indemnify and hold harmless City and its representatives, officers, directors, and employees from any loss or claim made by third parties to the extent arising directly or indirectly from Consultant's negligent performance and/or fault of Consultant, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of City and Consultant, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

For claims based upon professional negligence, Consultant's obligation to indemnify indemnitees for defense costs (as defined) is not immediate and shall be satisfied at the time of any settlement or judgment as to Consultant's indemnity obligations under this Agreement.

7. Insurance Requirements

7.1 During the term of this Contract, Consultant shall maintain, at its own expense, the following types of insurance in the following amounts:

- a. Commercial General Liability insurance, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards, if applicable):
 - \$2,000,000 – each occurrence (bodily injury)
 - \$2,000,000 – general aggregate
 - \$2,000,000 – property damage, contractual, etc.
 - \$2,000,000 – umbrella liability coverageCoverage shall also include contractual liability coverage for the indemnity provided under this contract.
- b. Automobile Liability insurance limit shall not be less than \$1,000,000 combined single limit per accident.
- c. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence.
- d. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.

7.2 Except as required in 7.1(d) above, if any of the above required insurance is arranged on a "claims made" basis, "tail" coverage will be required at final completion or termination of this Contract for a duration of two (2) years.

7.3 Policies shall provide that City, its council, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in

Section 7.1(a) and a waiver of subrogation against them shall be obtained for all coverages.

7.4 All coverages under Section 7.1 shall be primary over any insurance City may carry on its own.

7.5 City shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under this Contract.

7.6 All policies of insurance shall be issued by good, responsible companies, with a rating reasonably acceptable to City and that are qualified to do business in the state of Oregon.

7.7 Consultant shall furnish City with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. Consultant agrees to notify the City of Sweet Home by certified mail, return receipt requested within 10 business days of the Consultant's receipt of a notice of cancellation from its insurer. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

7.8 All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement with the certificate of insurance specifying the City of Sweet Home, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent and attached to Certificate of Insurance.

8. Workers' Compensation

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

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

9. Hours of Employment

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

10. Assignments and Subcontractors

Consultant may not assign or subcontract any of its responsibilities under this Contract without City's prior written consent. Consultant's assigning or subcontracting of any of its responsibilities under the Contract without City's consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, Consultant shall remain liable for all of its obligations under this Contract.

11. Labor and Material

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

12. Ownership of Work and Documents

All work performed by Consultant and compensated by City pursuant to this Contract shall be the property of City upon full compensation for that work performed or document produced to Consultant, and it is agreed by the parties that such documents are works made for hire. Consultant hereby conveys, transfers and grants to City all rights of reproduction and the copyright to all such documents. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

13. Termination for Convenience

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

13.2 City may unilaterally order Consultant to suspend all or part of the services under this Contract. If City suspends certain services under this Contract and later orders Consultant to resume those services, Consultant will be entitled to reimbursements for the costs actually and reasonably incurred, if any, in re-starting the suspended services.

14. Termination for Cause

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

14.1 If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.

14.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

14.3 If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

15. Termination for Default

Either City or Consultant may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

If Consultant fails to perform in the manner called for in this Contract or if Consultant fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Consultant setting forth the manner in which Consultant is in default. Consultant shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract.

16. Remedies

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

16.1 If terminated under paragraph 15 by City due to a breach by Consultant, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Consultant shall pay to City the amount of the reasonable excess.

16.2 In addition to the above remedies for a breach by Consultant, City also shall be entitled to any other equitable and legal remedies that are available.

16.3 If City breaches this Contract, Consultant's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Consultant is entitled.

16.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.

16.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Consultant shall immediately cease all activities related to the services and work under this Contract. As directed by City, Consultant shall, upon termination, deliver to City all then existing work product that, if the Contract had been completed, would be required to be delivered to City.

17. Nondiscrimination

During the term of this Contract, Consultant shall not discriminate against any employee or applicant for employment on the basis of any protected class as defined in ORS279A.112(b).

18. Governing Law; Jurisdiction; Venue

This Contract shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between City and Consultant that arises from or relates to this Contract which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Linn County for the state of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONSULTANT BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of City's protections under the Oregon Tort Claims Act.

19. Compliance with Laws and Regulations

Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with: (i) ORS 659a.142; (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) City's performance under this Contract is conditioned upon Consultant's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit B and incorporated herein by this reference. Consultant, its sub-consultants and all employers providing work, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Consultant shall adhere to all safety standards and regulations established by City for work performed on its premises or under its auspices.

20. Experience, Capabilities and Resources

By execution of this Contract, the Consultant agrees that:

Consultant is an experienced integration firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract to

design or administer any work within the scope and complexity contemplated by this Contract.

Consultant has the capabilities and resources necessary to perform the obligations of this Contract.

Consultant is familiar with all current laws, rules, and regulations which are applicable to the design and construction of work which may fall within the scope of this Contract, and that all drawings, specifications, and other documents prepared by Consultant shall be prepared in a manner consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances (herein the "Standard of Care") and shall exercise the Standard of Care in complying with applicable and non-conflicting laws, rules, and regulations.

21. Drawings, Specifications and Other Documents

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

22. Errors and Omissions

Consultant shall be responsible for correcting any errors or omissions in the drawings, specifications, and/or other documents which deviate from the standard of care set forth in Section 21. Consultant shall correct at no additional cost to City any and all such errors and omissions in the drawings, specifications, and other documents prepared by Consultant or its sub-consultants. Consultant further agrees to assist City in resolving problems relating to any project designs or specified materials that are caused by deviations from the Standard of Care

23. Contract Performance

Consultant shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. Consultant shall not be liable for delays that are beyond Consultant's control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any breach of Consultant's warranties or a default or defect in performance by Consultant that has not been cured.

24. Access to Records

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

25. Representations and Warranties

Consultant represents and warrants to City that (1) Consultant has the power and authority to enter into and perform this Contract, (2) when executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (3) Consultant shall, at all times during the term of this Contract, be duly licensed to perform the services, and if there is no licensing requirement for the profession or services, be duly qualified and competent, (4) the services under this Contract shall be performed in accordance with the professional skill, care and standards ordinarily used by professionals performing similar services under similar conditions. No other warranties are expressed or implied in this Agreement.

26. City Obligations

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

26.2 City shall establish and update, if necessary, overall project budgets, including consulting and construction costs.

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

26.4 City shall furnish all testing as required by law or the contract documents.

26.5 City shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the City's needs and interests, after Consultant has performed requisite project management and oversight duties.

26.6 City shall provide prompt written notice to Consultant if City becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in Consultant's design or performance under the contract.

26.7 City shall pay Consultant in accordance with paragraph 3 and Exhibit E of this Contract, upon receipt of Consultant's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed, or progress made on a project to date, on a pro rata basis.

26.8 City shall report the total amount of all payments to Consultant, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.

26.9 City shall guarantee access to, and make all provisions for Consultant to enter upon public and private property necessary for performance of the Scope of Work over which City exercises control.

26.10 Extra work or work on contingency tasks is not permitted unless authorized by the City in writing. Failure of Consultant to secure written authorization for extra work shall constitute a waiver of all rights to an adjustment in the Agreement price or Agreement time.

27. Arbitration

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

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

Notice of demand for arbitration shall be filed in writing with the other party to the agreement. The demand for arbitration shall be made within the 30-day period specified above. The City, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the Consultant to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

28. Attorney Fees

If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this contract to the extent due to the negligent performance of the Consultant's employees, representatives or subcontractors, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this contract without initiating

litigation, Consultant agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.

29. Successors and Assigns

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

30. Limitation of Liabilities

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

31. Foreign Contractor

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

32. Confidentiality

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

33. Force Majeure

Consultant shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war, epidemics, pandemics, declared states of emergency, closing or reduction of force by the contractors or governmental permit reviewing entities, the enactment of governmental actions which cause delays or limit travel..

34. Waivers

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

35. Severability

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

36. Survival

All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.

37. Headings

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

38. Integration and Modification

This Contract, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Contract. Any modifications or amendments to this Contract will only be effective when made in writing and signed by authorized parties for each party to this Contract.

39. Authority

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

40. Certificate of Compliance with Oregon Tax Laws

By executing this Contract, Consultant certifies under penalty of perjury that Consultant is, to the best of Consultant’s knowledge, not in violation of any Oregon tax laws described in ORS 305.385(6) and (7).

41. Time is of the Essence

Time is of the essence under this Contract.

CITY OF SWEET HOME

CONSULTANT

By: _____

By: _____

Authorized Signature

Name: Kelcey Young

Name: _____

Title: City Manager

Title: _____

Date: _____

Date: _____

Authorized & Approved by the City Council.
City Manager approves contract.

Approved as to form.

By: _____

Name: Robert Snyder

Title: City Attorney

Date: _____

Exhibit A
Scope of Work

Exhibit B

Oregon Public Contracting Requirements

ORS CHAPTERS 279B AND 279C REQUIREMENTS

(1) Consultant shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.

(2) Consultant shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Consultant or Subcontractor incurred in the performance of the contract.

(3) Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.

(4) Consultant and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617.

(5) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Consultant or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Consultant by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Consultant or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Consultant an amount equal to said claim until its validity is determined and the claim, if valid, is paid.

(6) Consultant shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Consultant, of all sums which the Consultant agrees to pay for such services and all monies and sums which the Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

(7) Consultant shall pay Consultant's employees who work under the public contract at least time and a half for all overtime the employees work in excess of 40 hours in any one week, except for employees under a personal services public contract who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

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

(9) All subject employers working under the Consultant are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126.

(10) All sums due the State Unemployment Compensation Fund from the Consultant or any Subcontractor in connection with the performance of the contract shall be promptly so paid.

(11) The contract may be canceled at the election of City for any willful failure on the part of Consultant to faithfully perform the contract according to its terms.

(12) Consultant certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.

(13) Consultant certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors.

Exhibit C
Request for Proposals

Exhibit D

Consultant's Proposal

Exhibit E

Consultant's Schedule of Rates and Charges