



CITY OF GEARHART

Staff Report

For City Council Meeting - 3/6/2024

Subject - New Business - Request for RFP Approval - Owner's Representative Services

Synopsis: The City of Gearhart is launching a project to explore the construction of a new public safety building to replace the outdated and seismically unsuitable 1958 fire station, aiming to serve both fire and police services more effectively. The project emphasizes community engagement to select an appropriate location, considering the challenges of the current site and the necessity to involve public feedback in the decision-making process. Key project goals include replacing the old fire station's structure to mitigate earthquake risks, removing hazardous materials, enhancing operational capacity and facilities for both fire and police departments, and addressing the needs based on community growth and service demand.

The project will involve hiring an owner's representative to oversee public engagement, develop conceptual plans, conduct a needs assessment, comply with state laws for buildings in tsunami zones, and manage site evaluations. This role also includes organizing public meetings, developing a community engagement strategy, and finalizing the financing plan with extensive information sharing through the City's website and social media.

This initiative aims to create a modern, resilient public safety facility that ensures the long-term safety and well-being of Gearhart's residents, underpinned by thorough planning, community involvement, and expert advice.

Council Options:

1. Motion to approve the publishing of the attached RFP seeking Owner's Representative Services to oversee the public safety building project;
2. Take other action desired by Council.

Recommendation: Staff recommends proceeding with issuing the RFP and plans to present a proposal recommendation at the April City Council meeting. Additionally, a request for building reserve funds will be made at that time.

Legal Analysis: N/A

Financial Analysis: N/A

Respectfully Submitted,

A handwritten signature in black ink, appearing to be the name "Chad", written in a cursive style.

Chad

Request for Proposals

for

Owner's Representative Services

Issue Date: March 8, 2024

Proposal Due Date:

Wednesday, March 27, 2024 at 3:00PM

City of Gearhart

PO Box 2510

Gearhart, Oregon 97138

(503) 738-5301

Request for Proposals

City of Gearhart—Project Management and Owner's Representative Services

The City of Gearhart (City) is seeking proposals from qualified and experienced consultants for the purpose of providing the services of an Owner's Representative to City for predevelopment, design and construction management and closeout of a City Hall. The City's objective is to enter into a Personal Services Agreement with a qualified consultant that will provide these comprehensive services.

The City's expectation of any consultant City contracts with is that the consultant's values align with the City's values of highly ethical conduct, fiscal responsibility, respect for City and others, and responsiveness to City's customers.

The Request for Proposals (RFP) documents may be obtained from the City's website www.cityofgearhart.com and viewed.

Successful proposers will be asked to sign a Personal Services Agreement with City. A sample of the agreement is attached as part of the RFP documents. City will require specific levels of insurance, a Gearhart business license, and a tax identification number. Proposers must evaluate this sample agreement and agree with the terms and conditions contained therein unless written objections are included as an addenda with their proposal. City will review the addenda and content of any such objection in the proposal evaluation process. Objections after the awarding of the contract will not be considered and are grounds for subsequent denial of the contract.

Proposals shall be submitted either in a sealed envelope or by email plainly identifying the RFP and contractor's name and address. Proposals shall be delivered to The City of Gearhart, Chad Sweet, City Administrator, PO Box 2510, Gearhart, OR 97138, or emailed to chadsweet@cityofgearhart.com.

Proposals will be received until 3:00PM on Wednesday, March 27, 2024 for the purpose of selecting a consultant to provide Owner's Representative Services. Proposals received after the 3:00PM deadline will not be considered and will be returned unopened to the proposer(s).

For additional information regarding this RFP, please contact City Administrator, Chad Sweet, at (503) 738-5501 or by email at chadsweet@cityofgearhart.com. The City of Gearhart reserves the right to reject any and all proposals or to negotiate individually with one or more consultants, and to select one or more consultants if determined to be in the best interest of City.

Dated this day of March 8, 2024.

I. INTRODUCTION

The City of Gearhart (City) is seeking the services of an Owner's Representative Team (OR) with demonstrated experience in working with public facilities for the design and construction of a Public Safety Building (the Project). The site of the Project is an approximate 1/3 acre portion of an acre parcel located on the West side of Pacific Way in downtown Gearhart. The scope of work includes community engagement, predevelopment, and owner's representative and project management services during the design and construction phases of the Project. Anticipated contract start date is April 2024.

II. PROJECT BACKGROUND

The City of Gearhart, nestled along the Pacific coast, is a predominantly residential community renowned for its scenic beauty and appeal as a destination for second homeowners and visitors. With a population of 1836, which has seen a significant growth of 22.5% since the last census, Gearhart is faced with the challenge of modernizing its public safety infrastructure to meet the needs of its expanding community.

The heart of this challenge lies with the city's fire station, situated in the heart of downtown Gearhart. Constructed in 1958 by community volunteers, the station is now recognized as seismically unsuitable for the region. Built from unreinforced masonry, the structure's mortar is failing, posing a severe risk that an earthquake could result in the building collapsing onto the fire trucks it houses. Beyond its seismic vulnerabilities, the station falls short of meeting the requirements of a modern fire station. It has a cramped training room that cannot accommodate the size of the volunteer firefighter team, a single small bathroom without decontamination facilities, no locker rooms, and inadequate space for an emergency operations center. Other critical issues include apparatus exhaust in the building, water intrusion from the driveway, the necessity for custom-ordered apparatus to fit the limited space, and persistent flat roof water leakage.

Additionally, there's a pressing need to integrate police facilities into a new building. The current police infrastructure lacks essential features, including a changing room, secure areas for sensitive document storage, an adequate armory, and a holding area for detainees during processing.

Efforts to address these challenges have been made in the past, with bond measures proposed in 2007 and again in 2023 to fund a new public safety building. The 2007 proposal, which also included plans for a new city hall at the current location, was not approved, partly due to concerns about its size and proximity to a recently passed water bond for a new treatment facility. The 2023 bond measure failed due to concerns over its high cost and proposed location outside the downtown area, among other reasons.

In response to these setbacks, the city organized Town Hall meetings in January and February 2024, where public sentiment showed support for the City Council's efforts to explore the need and potential locations for a new public safety building. These discussions mark a critical step forward in addressing Gearhart's urgent need for a modern, resilient public safety infrastructure that can adequately serve its growing population and ensure the community's safety and well-being.

III. PROJECT DESCRIPTION - Gearhart Public Safety Building Initiative

Project Location and Community Engagement:

The exact location for the new public safety building has not been determined. The community's input is essential in deciding whether the building should be located inside or outside the tsunami inundation zone and addressing land availability concerns. Although the site of the current fire station is a popular choice, it presents several challenges that need to be thoroughly examined. Engaging the community through

discussions and feedback is crucial to the project's success.

Project Needs and Goals:

The new public safety building must address several critical issues:

- Replacement of the current fire station's unreinforced masonry construction, which poses a significant earthquake risk.
- Remediation of hazardous materials, including asbestos, and addressing health impacts from carcinogens and lack of decontamination facilities.
- Improvement of capacity and functionality to meet current and future operational needs, including adequate training spaces, bathrooms, locker rooms, and emergency operations center (EOC) space.
- Accommodation of the police department, which currently lacks proper facilities for changing, secure document storage, armory, and detainee processing.
- Discussion on volunteerism's future and assessing the fire district's needs based on population and call volume trends.

Owner's Representative Responsibilities:

The project seeks an owner's representative to:

- Solicit and engage with an architect to develop a public engagement strategy and oversee its implementation.
- Develop multiple conceptual plans and high-level phasing plans.
- Work with the City of Gearhart to highlight the necessity of a new public safety building through a detailed and compelling needs assessment.
- Address state law changes for occupancy category IV buildings in tsunami inundation zones.
- Develop a work plan for site and building evaluations, ensuring multiple concepts are presented to the community for feedback.
- Assist in developing a community engagement plan, including organizing 3-4 public meetings to establish project goals, develop a project charter, and set evaluation criteria for different options.
- Display all relevant information on the City of Gearhart's website, including a project calendar, public meeting links, and the project charter.
- Start community engagement sessions, initiate conceptual drawings, and contract necessary consultants (surveyor, geotechnical engineer, structural engineer, and cost estimator).
- Further community engagement with information from initial sessions, utilizing polling stations and rendering boards to gather support.
- Finalize the financing plan and promote the project through the website, social media, and staff letters, including producing a FAQ for public dissemination.

Conclusion:

This project represents a pivotal step towards enhancing Gearhart's public safety infrastructure. Through meticulous planning, community engagement, and expert consultation, the initiative aims to deliver a state-of-the-art public safety building that meets the community's needs and anticipates future demands, ensuring Gearhart remains a safe and vibrant place to live.

IV. ISSUANCE OF RFP DOCUMENTS

The RFP documents may be obtained at no cost from the City website at: www.cityofgearhart.com.

Chad Sweet is the sole point of contact for all questions, concerns, and protests related to this RFP. He may be

reached at 503-738-5501 or by email at chadsweet@cityofgearhart.com.

V. PROPOSAL SUBMISSION

Sealed proposals shall be submitted and delivered by 3:00PM on Wednesday, March 27, 2024 in pdf format via email, in person, or by mail to:

Chad Sweet
City Administrator
City of Gearhart
PO Box 2510
Gearhart, OR 97138

Email: chadsweet@cityofgearhart.com

If proposals are submitted in-person or by mail, each Proposer must provide four (4) complete copies of its proposal, including attachments, in type-written format sealed in an envelope plainly identifying requested services and proposer's name and address. If submitted via email, the proposal, including attachments, shall be in pdf format. Proposals shall be addressed and submitted to the above location by the deadline. Phone and facsimile proposals will not be accepted. There will be no formal opening of proposals.

Proposals shall be printed double-sided.

A. SCHEDULE OF EVENTS

City anticipates the following general timeline for receiving and evaluating the proposals and selecting a consultant. This schedule is subject to change if it is in City's best interest to do so.

i. Posting of RFP	March 8, 2024
ii. Deadline for clarifications/questions/changes to RFP	March 15, 2024
iii. Deadline for Protests of RFP	March 22, 2024
iv. Proposal Due	March 27, 2024 by 3:00PM
v. Evaluation of Proposals Complete	March 28, 2024
vi. Invitation to Proposers for Interview & Presentation (if necessary)	March 29, 2024
vii. Interview & Presentation Meetings (if necessary)	April 1, 2024
viii. Evaluation of Interview & Presentation Complete	April 2, 2024
ix. City Council Approval	April 3, 2024
x. Posting Notice of Intent to Award	April 5, 2024
xi. Deadline for Protests of Award	April 12, 2024
xii. Commencement of Personal Services Agreement	April 14, 2024

B. RFP Clarification and Protests; Addenda

i. Informal Questions or Requests for Clarification. Any proposer requiring clarification of the information provided in this RFP may submit specific questions or comments in writing to the contact set forth in Section IV of this RFP. Email is the preferred form of written communication. The deadline for submitting such questions is set forth in Section V(A)(ii).

ii. Request for Clarification or Protest of Solicitation or Contract Documents. Any proposer wishing to protest this RFP or request clarification of any provision, specification, or contract term contained

in the solicitation documents, must submit such questions, comments, or protests to the contact set forth in Section IV of this RFP. The deadline for submitting such protests is set forth in Section V(A)(iii).

iii. Content of Solicitation Protest/Request for Clarification. The prospective proposer's written request for clarification or protest of the RFP must include all of the following and otherwise comply with OAR 137-048- 0240(1):

- Sufficient information to identify the solicitation that is the subject of the protest or request;
- The reasons for the protest or request, including any grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, or is legally flawed;
- Evidence or supporting documentation that supports the grounds on which the protest is based; and
- A statement of the desired changes to the procurement process or the solicitation document that the prospective Proposer believes will remedy the conditions upon which the prospective Proposer based its protest or request.

iv. Addenda. City reserves the right to make changes to the RFP by written addenda. If City determines that a change or clarification to the solicitation documents is necessary, such information, clarification, or interpretation will be supplied in a written addendum, posted to City's website at www.cityofgearhart.com.

Proposers should consult City's website regularly until the proposal due date and time to assure that they have not missed any addendum announcements. By submitting a proposal, each proposer thereby agrees that it accepts all risks, and waives all claims, associated with or related to its failure to obtain addendum information. Proposers will also be required to acknowledge receipt of each addendum in writing as part of their proposals. Additionally, City will send addenda to all prospective proposers known to have obtained the solicitation documents at the time addenda is issued. Statements made by City's representatives are not binding on City unless confirmed by written addendum.

No addenda will be issued later than five days before the date that proposals are due, except an addendum, if City deems necessary, postponing the due date for proposals, withdrawing the RFP, or modifying elements of the RFP resulting from delayed process.

C. CONFIDENTIALITY

City is subject to the Oregon Public Records Law (ORS 192.311 to 192.478), which requires City to disclose all records generated or received in the transaction of City business, except as expressly exempted under ORS 192.338 to 192.355, or other applicable law.

Pursuant to ORS 279C.107, City need not open proposals for public inspection until after execution of the contract(s) awarded under this RFP. Thereafter, City will not disclose records submitted by a proposer that are exempt from disclosure under the Oregon Public Records Law, subject to the following procedures and limitations:

The proposer must mark all proposal pages containing the records it has determined as confidential under Oregon Public Records Law and must segregate those pages in the following manner:

- i. Such pages must be clearly marked "Confidential" on each page of the confidential document.
- ii. Proposer must separate confidential pages from its other proposal pages by providing the confidential pages to City in a separate envelope or package. Proposer must separate confidential pages from its other proposal pages by providing the confidential pages to City in a separate e-mail file attachment.
- iii. In its proposal, proposer must cite the specific statutory exemption in Oregon Records Law exempting such pages from disclosure.
- iv. Subsections (i) and (ii) above will prevail in the event these provisions conflict with formatting or response instructions elsewhere in this document.
- v. Proposers may not mark an entire proposal confidential. Should a proposal be submitted in this manner, City will hold no portion of the proposal as confidential, unless such a portion is segregated as required under subsection (b) above and is determined exempt from Oregon Public Records Law.

Notwithstanding the above procedures, City reserves the right to disclose information that City determines, in its sole discretion, is not exempt from disclosure or that City is directed to disclose by the district attorney or a court of competent jurisdiction.

Prior to disclosing such information, City will make reasonable attempts to notify the Proposer of the pending disclosure.

D. CANCELLATION

City reserves the right to cancel this RFP at any time or to reject any and all proposals if City determines that doing so is in the public interest.

E. LATE PROPOSALS

All proposals that are not received by the proposal due date in Section V(A) will not be considered and will be returned unopened to the Proposer(s). Phone and facsimile proposals will not be accepted. Delays due to mail and/or delivery handling, including but not limited to delays within City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the proposal to the correct location by the proposal due date.

F. DISPUTES

In case of any doubt or differences of opinion as to the items or service to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of City shall be final and binding upon all parties.

G. PROPOSER'S REPRESENTATION

Each proposer, by the act of submitting its proposal, represents that:

- i. It has read and understand the proposal documents and its proposal is made in accordance therewith;
- ii. It has familiarized itself with the local conditions under which services solicited in this RFP will be performed;

- iii. Its proposal is based upon the requirements described in the RFP without exception, unless clearly stated in the response.

H. CONDITIONS OF SUBMITTAL

By the act of submitting a proposal in response to this RFP, the proposer certifies that:

- i. To its best knowledge and belief, no elected official, officer, employee, or person, whose salary is payable in whole or part by City, has a direct or indirect financial interest in the proposal, or in the services to which it relates, or in any of the profits thereof other than as fully described in the proposer's response to this solicitation.
- ii. The proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and, if its proposal is accepted, the proposer shall accept the contract documents thereto unless substantive changes are made in same without the approval of the proposer.
- iii. The proposer is of lawful age (if an individual); is the only one interested in this proposal; and no person, firm, or corporation, other than that named, has any interest in the proposal, or in the proposed contract.
- iv. The proposer has quality experience providing requested services in a capacity similar to the duties outlined within the scope of services.

I. COST OF REQUEST FOR PROPOSALS AND ASSOCIATED RESPONSES

Proposers will bear sole responsibility for all costs incurred in preparing and providing their proposals in response to this RFP. City is not liable to any proposer for any loss or expense caused by or resulting from the cancellation of a solicitation or rejection of a proposal.

J. CITY REQUESTS FOR CLARIFICATION, ADDITIONAL RESEARCH, & REVISIONS

City reserves the right to obtain clarification of any point in a proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of a Proposer to respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the proposal.

City may obtain information from any legal source for clarification of any proposal or for information of any proposer. City need not inform the proposer of any intent to perform additional research in this respect or of any information thereby received.

City may perform, at its sole option, investigations of the responsible proposer. Information may include, but shall not necessarily be limited to current litigation and contracting references. All such documents, if requested by City, become part of the public records and may be disclosed accordingly.

City reserves the right to request clarifications of proposals after the submission of proposals and before award.

K. REJECTION OF PROPOSALS

As set forth in Section V(D), City reserves the right to reject any or all proposals received as a result of this RFP if City determines that rejection is in the public interest. Reasons for proposal rejection may include but are not limited to the following:

- i. Failure of the proposer to adhere to one or more of the provisions established in the RFP.

- ii. Failure of the proposer to submit a proposal in the format specified herein.
- iii. Failure of the proposer to submit a proposal within the time requirements established herein.
- iv. Failure of the proposer to adhere to ethical and professional standards before, during, or following the proposal process.
- v. Failure of proposer to otherwise comply with all prescribed public procurement procedures and requirements.

L. MODIFICATION OR WITHDRAWAL OF PROPOSAL BY PROPOSER

A proposal may not be modified, withdrawn, or canceled by the proposer for 60 calendar days following the time and date designated for the receipt of proposals. Proposals submitted before the proposal due date may only be modified or withdrawn in person with proper identification, or by issuing a written request on company letterhead, signed by an authorized representative, prior to the proposal due date and time. Written requests for withdrawal must be so worded as not to reveal material contents of the original proposal.

Withdrawn proposals may be resubmitted up to the proposal due date and time, provided that they are then fully in conformance with the RFP.

M. PROPOSAL OWNERSHIP

All material submitted for any portion of a proposal in response to this RFP, or during any phase of this solicitation, will become the property of City and will not be returned to proposers.

N. DURATION OF PROPOSAL

Proposal prices, terms and conditions shall be firm for a period of at least 60 days from the proposal due date. The successful proposal shall not be subject to future price escalation or changes of terms if accepted during the 60-day period. Price decreases or changes in terms by others after the acceptance of a proposal will not be considered.

O. AFFIRMATIVE ACTION/NONDISCRIMINATION

By submitting a proposal, the proposer agrees to comply with the Fair Labor Standard Act, Civil Rights Act of 1964, Executive order 11246, Fair Employment Practices, Equal Employment Opportunity Act, Americans with Disabilities Act, and Oregon Revised Statutes. By submitting a proposal, the proposer certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business in awarding a subcontract.

P. TAX COMPLIANCE

By submitting a proposal, the proposer represents and warrants that the Proposer has complied with the applicable tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. The Proposer and any consultants listed on BOLI's List of Ineligibles will be rejected.

Q. PROPOSAL AND PROPOSER REQUIREMENTS

Proposer shall respond to specific criteria that shall facilitate proposal evaluation. All proposals submitted in response to this RFP must include the following:

I. INTRODUCTORY LETTER

The letter shall name the person(s) authorized to represent the proposer in any negotiations and name of the person(s) authorized to sign any contract that may result. An authorized representative for the proposer shall sign the letter.

II. QUALIFICATIONS

This criteria relates to the proposer's capabilities and resources in relation to this Project. Please address the following:

i. Team Capacity and Relative Experience

Provide a description of your firm's and key personnel's experience in providing services similar to those described in this RFP. Include a short profile of each individual proposed to perform work under the contract, if awarded, and their role. Include relevant experience, active and applicable licenses and/or certifications, and available capacity, including time allocation for this project. Tell us what sets you and your firm apart from your competition. Highlight specific public sector experience that directly translates to your ability to be successful as an OR for the Project. Provide an organizational chart of the complete team proposed for the Project.

ii. Community Engagement Experience

This is a highly visible and important project for the Gearhart community. Therefore, ongoing communication and community outreach will be an important element of the Project. Creating stakeholder consensus will be critical to moving this Project forward. The OR will be expected to provide guidance and input to City on outreach activities, and provide coordination assistance with the architect and CM/GC if required to provide materials for community engagement purposes. Please describe your experience with supporting engagement activities with any of your clients and describe how you will use public feedback to help inform and advance the Project.

iii. Civic Facilities Experience

It is important that the OR have experience building civic facilities. Provide project team references for similar projects; highlighting the recently completed public/government/municipal projects. Provide a complete description of all work in the last three years with municipal governments.

iv. CM/GC Experience

The CM/GC build method requires specific statutory and relationship handling, so it is important that the proposer have experience in this area. Provide a complete description of projects done by the team using a CM/GC build method.

v. Contract Agreements and Negotiations

The OR will have experience negotiating and facilitating agreements with architects, contractors, and other project consultants.

III. PROJECT APPROACH AND METHODS

Describe your firm's project approach and methods to meet the requirements of the Statement of Work described in Exhibit A. Include a summary of your project management approach and communication protocols. Describe any additional City resources (staff time, materials, etc.) that are necessary to complete any aspect of the Project. Tell us how you will meet the demands of this complex project, including meeting deadlines when short turn-around times are required.

IV. PROPOSED COST

Based on the anticipated Scope of Work provide a total Project cost including estimated reimbursable costs and other related scopes. Proposed amount should be outlined for services of each phase and include estimated total hours required. Costs should assume all requirements outlined within this RFP. Proposed amount should be accompanied by an exhibit detailing all hourly rates that may apply to this Project, including rates for sub-consultants. The fee schedule shall be only one of several evaluation criteria and will not be the exclusive factor in determining the successful proposal.

V. PROPOSER REQUIREMENTS

Any contractor submitting a proposal must meet the following minimum requirements:

- i. All Proposers must be licensed to perform business in the State of Oregon and properly licensed to perform the services described in this RFP;
- ii. All Proposers must have been in business as their current entity for at least five (5) years;
- iii. All Proposers must be experienced in those services requested of City;
- iv. All Proposers must agree to execute City’s Personal Services Agreement, if awarded; and
- v. All Proposers must carry required insurance, naming City an additional insured.

R. SELECTION COMMITTEE & INTERVIEW PANEL

A selection committee will be comprised of at least four (4) members. Each proposal shall be evaluated on its completeness and quality in accordance with the criteria identified in this RFP by the selection committee. City has the right to require any clarification or change needed to understand the proposer’s approach to the Project.

Each proposal shall be evaluated as a demonstration of the proposer’s capabilities and understanding of the Project. Evaluation criteria and weighting factors for the proposal shall be as follows:

Criteria	Maximum Points
Introductory Letter	Pass/fail
Team Capacity and Relative Experience	20
Community Engagement Experience	20
Civic Facilities Experience	5
CM/GC Experience and Qualifications	5
Project Approach and Methods Proposed	20
Cost	20
Overall quality of response	10
TOTAL	100

Each member of the selection committee will independently score proposals in accordance with the evaluation criteria above. The City will then average the proposal scores per category and sum the

category averages for a total score for each proposal.

The interview panel shall interview the three (3) highest-scored proposers whose proposals evidence the highest level of qualification and experience to proceed to an oral interview and presentation. Should fewer than three (3) proposals be received, the proposers submitting a proposal that meets minimum requirements will be interviewed. Each proposer selected to interview and present will require the proposer's proposed project manager for the Project to attend the interview and presentation.

The interview panel will score the interviews using the criteria below. No additions, deletions or substitutions may be made to proposals during the interview and presentation that cannot be viewed as clarification. Evaluation criteria and weighting factors for the interview are listed below.

Criteria	Maximum Points
Team Capacity and Relative Experience	25
Community Engagement Experience	25
Project Approach and Methods Proposed	25
Overall quality of Interview and Presentation	25
TOTAL	100

Each member of the interview panel will independently score the interviews in accordance with the evaluation criteria above. The City will then average the interview scores per category and sum the category averages for a total score for each interview. The sum of the total score for the proposal and the total score for the interview will be used to determine the highest-ranked proposer.

City reserves the right to:

- Reject any and all proposals not in compliance with all public procedures and requirements;
- Reject any proposal not meeting the specifications set forth herein;
- Waive any or all irregularities in proposals submitted;
- Award contracts for any or all parts of the services solicited under this RFP; and
- Request references and other data to determine responsiveness.

Following evaluations and interviews of the proposers, City will provide written notice of its intent to award the contract to the highest-ranked proposer.

S. PROTEST OF CONTRACT AWARD.

- i. A proposer may protest the intent to award a contract in accordance with OAR 137-048-0240, if:
 1. The Proposer is adversely affected because the Proposer would be eligible to be awarded the contract in the event that the protest is successful; and
 2. The reason for the protest is:
 - All higher-ranked proposals (or, in the event multiple contracts are awarded, a sufficient number of proposals) are non-responsive or failed to meet the requirements of

this RFP, or all higher-ranked proposers (or, in the event multiple contracts are awarded, a sufficient number of proposers) are not qualified to perform the services required under this RFP;

- City has failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation materials;
 - City has abused its discretion in rejecting the protestor's proposal as non-responsive or;
 - City's evaluation of proposals or the District's subsequent determination of Award is otherwise in violation of City's Public Contracting Rules or the Public Contracting Code.
3. The protest is clearly marked as a protest, includes a description of this RFP, and is delivered to the point of contact and address set forth in Section V of this RFP.
 4. All protests of Award must be in writing and physically received by the title of procurement official no later than 5:00 p.m. on the deadline for submitting such protests set forth in Section V(A)(x).
 5. Protests must specify the grounds for the protest including the specific citation of law, rule, regulation, or procedure upon which the protest is based. The judgment used in scoring by individual evaluators is not grounds for protest.
- ii. Protests not filed within the time specified in this Section VII(A), or which fail to cite the specific law, rule, regulation, or procedure upon which the protest is based will be dismissed. An issue that could have been raised by request for clarification or protest of the solicitation is not a ground for protest of award.
 - iii. City will resolve all protests in accordance with OAR 137-048-0240(3).

T. CONTRACT REQUIREMENTS

City reserves the right to negotiate final terms of a Personal Services Agreement as City determines to be in its best interest.

City will negotiate the agreement once the selection committee and interview panel have chosen the top-ranked proposer. If City cannot come to terms with the top-ranked proposer, City may enter into negotiations with the second-ranked proposer. This process may continue until City reaches an agreement which City deems appropriate for the services.

The award of a contract is accomplished by executing a written Personal Services Agreement that incorporates the proposer's proposal, clarifications, addenda, additions, and insurance. All such materials constitute the contract documents.

EXHIBIT A
SCOPE OF WORK (SERVICES TO BE PROVIDED)

Contractor shall support the City of Gearhart and its staff through all phases of the Project, including but not limited to:

A. General Project Management and Expectations

- Organize and lead the Owner, Architect and Contractor (“OAC”) team
- Establish a communication protocol for the OAC and develop and maintain an organizational chart for the Project.
- Co organize the City Project Management Team (PMT) meetings including creating and assisting in review and preparation of agendas, meeting materials, preparing meeting minutes and ensuring follow up tasks are completed.
- Attend and prepare presentation materials for City Council meetings as required by the City.
- Develop preliminary project schedule with key tasks and milestones identified.
- Monitor Project progress against the schedule and adjust as needed to account for opportunities and revisions.
- Prepare and maintain Project Management Plan and establish and prepare preliminary Project budget inclusive of soft costs and City’s direction.
- Maintain open lines of communication between all parties, including architect, contractor, and City to help ensure timely decision making and ensure that Project milestones are achieved. Coordinate communications and documentations of the Project activities, and keep City informed of progress, issues, and solutions of the work of the Project. Utilize project budgets, schedules, correspondence and other tools to communicate and document the progress of the work of the Project.
- Review and submit to the City for approval and payment all invoices for architect and all contractors
- Present unresolved Project-related issues with a recommendation of possible solutions.

B. Phase 1 – Predevelopment and Schematic Design Phase

- Assist City with creating, publishing, and overseeing architect RFP and selection process compliant with public contracting law.
- Assist City in hiring a historic preservation specialist for the purposes of satisfying the State of Oregon’s historic preservation requirements.
- Manage environmental cleanup and other due diligence related to site development and readiness.
- Develop outreach strategy with City and architect to get public feedback on site planning and building design.
- Develop and evaluate site plan alternatives and cost estimates for building options as needed.
- Provide guidance on Project financing and budget development.
- Assist City throughout site planning and schematic design process to achieve a project within available resources.
- Provide guidance to Owner throughout process to ensure efficient delivery of design services and

cost effective design solutions.

- Provide detailed review of all documents and specifications of materials.
- Provide comment on design and other deliverables related to building function, value and performance.
- Facilitate City directives by assisting City in seeking, gaining, and coordinating required decisions.

C. Phase 2 – Design and Construction Phase

- Assist City with creating, publishing, and overseeing CM/GC RFP and selection process compliant with public contracting law.
- Assist the design team to develop, create, and value engineer the design and construction documents to reflect City's requirements. Review and comment to City on all design deliverables relative to functionality, budget, performance goals, and other criteria requested by City.
- Monitor the design process and coordinate between CM/GC and architect as needed.
- Coordinate internal project team including any necessary equipment requirements.
- Perform construction project monitoring activities as City's field representative (conducting all City-related, on-site visits as needed) to ensure CM/GC delivers the Project in accordance with the Construction Contract.
- Advise and participate in monthly City Project Management Team meetings.
- Actively participate in weekly City-Architect-Contractor (OAC) meetings
- Coordinate consultants' furniture fixtures and equipment and owner furnished, contractor installed scope including low voltage, security, and other special consultants as needed.
- Coordinate with CM/GC to develop a communication protocol for the processing of change orders, reporting, and control of all shop drawings, transmittals, submittals, substitutions, catalogs, Project reports, field orders, test reports, inspections, Operations and Maintenance manuals, and other construction documentation.
- Participate in weekly on-site construction progress meetings, conduct weekly site visits and resolve any field coordination issues.
- Prepare and distribute progress meeting minutes and prepare and maintain project logs.
- Maintain a weekly photo documentation of progress and complete a monthly field observation report and distribute to Owner.
- Conduct solicitation and manage third party independent review of inspection and testing services such as building envelope, special (materials, welding, etc.) inspection work, and geotech.
- Submit for review and approval to City any substitution requests, requests for information ("RFIs") or change order requests with CM/GC, Architect and City.
- Direct and coordinate ongoing value engineering.
- Review CM/GC's draw requests, including percentage of work completed and withholding or disbursements of applicable retainage. Review findings with City.
- Monitor project budget and schedule; advise City of any schedule or budget concerns. Assist City with managing Project contingency and completing Project within available budget.
- Review, and advise City on, architect and engineer observation reports. Review, and advise City on, special inspection reports.
- In coordination with Architect, CM/GC and City, assist in project inspection for Substantial

Completion, advise CM/GC and Architect on preparation of punch list, perform re-inspection, and make recommendation to City on Substantial Completion and Final Acceptance.

- Analyze and provide recommendations regarding CM/GC and Architect claims if submitted.
- Provide assistance with commissioning of building and systems, including any needed follow up.
- Perform other related work as directed by City.

D. Phase 3 – Post Construction and Closeout.

- Perform project closeout activities to include review and compilation of all closeout materials provided by CM/GC and architect including but not limited to as-built drawings and as-built survey, operations and maintenance manuals, copies of and documentation that all permits have been satisfactorily closed, consent of surety and release of all liens and waivers and obtain keys and related items as hard copies in binders and as electronic files. Submit information to City.
- Conduct post-work photo documentation of site conditions.
- Review Final Payment and retainage release requests.
- Participate in Project Team post-construction assessment and lessons learned.
- Upon completion and acceptance of Work, submit to Owner all observation reports, photos, weekly meeting minutes, and other construction project management documents.
- One-year warranty walk

EXHIBIT B
SAMPLE PERSONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT
Between
CITY OF GEARHART
and
[NAME OF CONSULTANT]

This Professional Services Agreement ("Agreement") is made by and between the City of Gearhart, a municipal corporation of the State of Oregon ("City") and [Name of Consultant] ("Consultant"), for Owner's Representative and project management. The parties agree as follows:

CONSULTANT DATA

Consultant attests that it is an independent contractor solely responsible for the work performed under this Agreement. Consultant, its subconsultants, employees, and agents shall not be deemed employees of City. Consultant shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for the Services under this Agreement.

Full Business Name:

Address:

City, State, ZIP:

Business Telephone:

Facsimile:

E-mail:

Federal Tax Identification Number ("TIN") or Social Security Number ("SSN"):

Consultant must submit a completed "Request for Taxpayer Identification Number and Certification" (Form W-9) with this signed Agreement. Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Consultant.

Consultant certifies under penalty of perjury that Consultant is a:

- Sole Proprietor Corporation Limited Liability Company
 Partnership Other [describe: _____]
-

TERMS AND CONDITIONS

1. General Project and Agreement Information.

- a. Project Description: Assist City by providing Owner's Representative and project management services as more fully described in City's Request for Proposals ("RFP") dated _____ and incorporated by reference herein and Exhibit C (Scope of Work) to this Agreement (the "Services") for the design and construction of a new City Hall (the "Project").
- b. Consultant's Project Team: Consultant's team is as set forth in Consultant's Response to City's RFP ("Consultant Response") submitted on _____ and incorporated by reference herein.
- c. Agreement: The Agreement consists of these Terms and Conditions and the following Exhibits:
Exhibit A: Payment Schedule
Exhibit B: Insurance Requirements
Exhibit C: Scope of Work
- d. Maximum Compensation: The maximum total compensation, including any reimbursable expenses, payable to Consultant under this Agreement is \$_____.

2. Consultant's Duties.

- a. Consultant Representative. Consultant shall identify a representative authorized to act for Consultant on the Project. City has the right to review and approve any representative proposed by Consultant, which approval shall not be unreasonably withheld. Consultant shall not appoint a representative to whom City has reasonably and timely objected. Consultant shall not substitute representatives without City's review and approval. Consultant acknowledges that this Agreement was awarded in part on the basis of the unique background and abilities of Consultant's team, including key personnel and subconsultants, identified by Consultant. Consultant shall not remove, reassign, or replace key personnel without City's prior written consent.
- b. Subconsultants. Consultant shall identify by firm, name, and title, the primary subconsultants who will perform Services under this Agreement. Consultant shall not engage or assign any person or entity to whom City has made a reasonable and timely objection. City has the right to review and approve any subconsultant substitutions proposed by Consultant. City shall not unreasonably withhold its review and approval of these substitutions. Upon City's request, Consultant shall promptly provide copies of Consultant's agreements with subconsultants.
- c. Conflicts. Consultant represents that Consultant has no existing interest and shall not acquire any interest, direct or indirect, that would reasonably appear to interfere in any manner or degree with the performance of Services under this Agreement and that Consultant shall employ no person having such interest.
- d. Insurance. Before beginning the Services, Consultant shall obtain and maintain for the duration of this Agreement all insurance coverages listed in Exhibit B (Insurance Requirements). Maintenance of insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach.

3. Scope of Consultant's Services.

- a. Legal and Policy Compliance. Consultant shall provide the Services in accordance with the terms of this Agreement, federal, state, or local law or ordinance, and applicable City rules, policies, and administrative directives. Consultant shall provide the Services so that the Project will be completed as expeditiously and economically as possible within the total budgeted cost to City and in City's best interests.
- b. Standard of Care. Consultant shall perform the Services with skill, care, and diligence in accordance with the standard of care applicable to such Services performed by recognized firms providing similar services in the same or similar locality, and on projects similar to the Project. Consultant shall be responsible to City for all Services provided whether provided by Consultant or by subconsultants it engages.
 1. All persons or entities providing Services under this Agreement shall be licensed, as may be required by Oregon law.
 2. Consultant shall rely on its professional judgment as to the accuracy and completeness of City-provided services and information. Consultant shall provide prompt written notice to City if Consultant becomes aware of any material deficiencies, errors, omissions, or inconsistencies in City services or information or if in Consultant's opinion the Project cost budget will not be sufficient to complete the construction as programmed.
- c. Time is of the Essence. Time is of the essence in the performance of this Agreement. Consultant shall not be responsible for delay in performance to the extent those delays are caused by circumstances beyond Consultant's reasonable control or where a delay has been approved in writing by the City.
- d. Additional Services. Consultant shall perform only the Services authorized by this Agreement. Additional Services will be compensated only as authorized in advance and in writing by City. City will not pay for additional Services made necessary by Consultant or any subconsultant mistakes.
- e. Approvals; Permits. Consultant represents that it and its subconsultants have expertise and working knowledge of the applicable approval and permit application requirements of any governmental jurisdiction and shall be responsible to provide the Services in the form and at the time required to obtain such approvals or permits. To the extent required, Consultant shall assist City in preparing and submitting any such applications and will execute such applications on City's behalf. Consultant shall not execute such documents for City.
- f. Independent Contractor. Consultant shall perform all Services as an independent contractor. Although City reserves the right to set the delivery schedule for the Services and to evaluate quality of completed Services, City cannot and will not control the means and manner of Consultant's performance. Consultant is responsible to determine the appropriate means and manner of performing the Services. Consultant, Consultant's employees, and any subconsultants are not "officers, employees, or agents" of the State of Oregon or City (as those terms are used in ORS 30.265) and shall have no authority to bind City for the payment of any cost or expense without City's express written approval.
- g. Other Service Providers. City reserves the right to enter into other agreements for work additional or related to the Project, and Consultant agrees to cooperate fully with these other contractors and with City personnel. When requested by City, Consultant shall coordinate its performance under this

Agreement with such additional or related work. Consultant shall not interfere with the work performance of any other contractor or City employees.

4. City's Duties.

- a. Written Information. Unless otherwise provided for under this Agreement, City shall provide written information in a timely manner on requirements and limitations on the Project. This information shall include City's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.
- b. City Representative. City shall identify a representative authorized to act on its behalf on all Project matters (the "City Representative"). The City Representative will have the sole authority to make decisions for City under this Agreement.
- c. Other Consultants. City shall coordinate the services of its own consultants with Consultant's Services. Upon Consultant's request, City shall furnish copies of the scope of services in the contracts between City and City's consultants.
- d. Site Access. City shall provide Consultant access to the Project site before Services begin and shall cause City contractors to provide Consultant access to their work wherever it is in preparation or progress.

5. Access to Records. Consultant shall maintain all fiscal records directly relating to this Agreement in accordance with generally accepted accounting principles. In addition, Consultant shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Consultant's performance. Consultant agrees that City and its authorized representatives shall have access to the books, documents, papers, fiscal records, writings, plans, and records of Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. Consultant shall retain and keep accessible all such books, documents, papers, fiscal records, writings, plans, and records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

6. Ownership of Work Product. City shall be the owner of, and shall be entitled to possession of any and all, work products of Consultant which result from this Agreement, including but not limited to any computations, plans, reports, schedules, drawings, agendas, minutes, correspondence, or pertinent data and information gathered by or computed by Consultant prior to termination of this Agreement by Consultant or upon completion of the Services pursuant to this Agreement.

7. Term and Termination.

- a. Start and End Dates. This Agreement becomes effective on the date of the last authorized signature below. Unless earlier terminated as provided below, this Agreement shall continue through
- b. Unilateral. City may terminate this Agreement in writing at any time for its convenience. If City terminates for convenience, Consultant may invoice City and City shall pay all undisputed invoice(s) for Services performed until City's notice of termination.
- c. Mutual. Either party may terminate this Agreement in the event of a material breach by the other. To be effective, the party seeking termination must give to the other party written notice of the breach

and its intent to terminate. If the breaching party fails to cure the breach within 15 days of the date of the notice, the non-breaching party may terminate this Agreement at any time thereafter by giving a written notice of termination.

- d. Other. Except as indicated in this Section, termination will have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring before the effective date of such termination.

8. Payments.

- a. Exhibit A (Payment Schedule). City shall pay Consultant for Services performed under this Agreement according to the provisions of Exhibit A.
- b. Monthly Invoices. Consultant shall provide City with monthly invoices detailing Services rendered and reimbursable expenses incurred in the preceding month. Invoices shall include itemization of all approved Agreement amendments whether or not they are currently being billed. Consultant expressly waives any right to additional payment for any Services in the absence of City's written authorization or request.
- c. Payment Method. Upon work completion and acceptance, invoice approval, and according to this Agreement's Terms and Conditions, City shall pay Consultant for Services rendered and for reimbursable expenses authorized under this Agreement net 30 days. City shall make no deductions from Consultant's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors or on account of the cost of construction changes other than those for which Consultant is liable.
- d. Reimbursables. Upon City's request, Consultant shall provide to City all records of reimbursable expenses, expenses pertaining to a change in Services, and any Services performed on the basis of hourly rates or expense, and shall be available to City or City's authorized representative at mutually convenient times. Consultant shall save these records for at least three years after final payment.
- e. Errors and Omissions; Fee Adjustments. City will not pay for any change order fee increases due to Consultant's errors or omissions. Regardless of the structure of Consultant's fee, the fee may be adjusted downward if, in accordance with this Agreement, City reduces the Services to be provided under this Agreement.
- f. Non-Appropriation; Adequate Funding. City is prohibited from contracting for Services for which it has not received appropriated funds. If payment for Services under this Agreement extends into City's next fiscal year, City's obligation to pay for such work shall be subject to approval of future appropriations to fund this Agreement. Moreover, continuation of this Agreement at specified levels is specifically conditioned on adequate funding under City's budget adopted in June of each year. City reserves the right to adjust the level of Services provided for in this Agreement in accordance with funding levels adopted by City Council.

9. **Indemnification**. Consultant shall defend, indemnify and hold harmless City and its consultants, councilors, officers, directors, officials, employees, agents, representatives, and volunteers (the "Indemnitees") for, from, and against any and all loss, liability, damage, demands, claims, costs, and expenses, including

reasonable attorney and expert fees, to the extent caused by the acts or omissions of Consultant or its agents, consultants, employees, or representatives, including without limitation for:

- a. Breach of this Agreement by Consultant;
- b. Death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders, to the extent caused by the performance of Consultant or those for whom Consultant is responsible;
- c. Violation or infringement of third-party intellectual property rights by Consultant;
- d. Any negligent acts or omissions or willful misconduct by Consultant or persons for whom Consultant is responsible; and
- e. Claims for compensation asserted by the Consultant's employees (including wage-and-hour or benefit claims) or any violation of federal, state, or local wage-and-hour or labor laws and regulations by Consultant or persons for whom Consultant is responsible.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section. In claims against any person or entity indemnified under this Section by an employee of Consultant, Consultant itself, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Consultant under workers' compensation acts, disability benefit acts, or other employee benefit acts. No indemnification provided by Consultant under this Section is required to indemnify the Indemnitees to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own acts, omissions, or negligence, but Consultant must provide indemnity to the extent of its own negligence or the negligence of its consultants, employees, or representatives to the extent required by law or by this Agreement.

10. Compliance with State of Oregon Public Contracting Code.

- a. **Nondiscrimination.** As required by ORS 279A.110, Consultant shall not discriminate against a disadvantaged business enterprise, minority-owned, women-owned, or emerging small businesses certified under ORS 200.055 or a business enterprise that is owned or controlled by or employs a service-disabled veteran.
- b. **Tax Compliance Warranty.** As required by ORS 279B.045, Contractor represents and warrants that Contractor has complied with the applicable tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Contractor covenants that it will continue to comply with the tax laws of this state or a political subdivision of this state during the term of this contract. Failure by Contractor to comply with the applicable tax laws of this state or a political subdivision of this state before the execution of this Agreement or during the term of this Agreement is a default for which City may terminate this Agreement and seek damages and other relief available under the terms of this Contract or under applicable law.
- c. **Payment of Labor.** As required by ORS 279B.220 and 279C.505, Consultant shall:
 1. Make payment promptly, as due, to all persons supplying labor or material to Consultant for the performance of the Services provided for in this Agreement;

2. Pay all contributions or amounts due the Industrial Accident Fund from Consultant or sub-consultant incurred in the performance of this Agreement;
 3. Not permit any lien or claim to be filed or prosecuted against City on account of any labor or material furnished; and
 4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- d. Payment for Medical Care and Workers' Compensation. As required by 279B.230 and 279C.530:
1. Consultant shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums that Consultant agrees to pay for the services and all moneys and sums that Consultant collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services.
 2. 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.
- e. Hours of Labor, Pay Equity, Salary Discussions. As required by ORS 279B.020(5), 279B.235(3), and 279C.540(6), for Consultant's employees subject to Oregon employment laws:
1. Maximum Hours. Employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (January 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).
 2. Exemption. These requirements do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
 3. Notice to Employees. Consultant shall give notice in writing to its employees who perform work under this Contract, either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
 4. Consultant shall comply with ORS 652.220 (Prohibition of discriminatory wage rates based on sex; employer not to discriminate against employee who is a complainant). Compliance is a material element of this Agreement. Failure to comply is a breach that entitles City to terminate this Agreement for cause.
 5. Consultant may not prohibit any of Consultant's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person, and may not retaliate against an employee who does so.
- f. Limitation on Claims. For Consultant's employees subject to Oregon employment laws and as required by ORS 279C.545, any worker employed by Consultant shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Consultant within 90 days from the completion of this Agreement, providing Consultant has:

1. Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work; and
2. Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

11. Other Provisions.

- a. Controlling Law; Venue. Any dispute under this Agreement or related to this Agreement will be governed by Oregon law, and any litigation arising out of the Agreement will be conducted in Tillamook County Circuit Court. 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 State of Oregon.
- b. Claims. Any claim or dispute arising under this Agreement will be delivered in writing to the other party within a reasonable time after the claim, dispute, or other matters in question have arisen. Consultant and City will meet within ten days of the date of delivery of the claim to attempt to resolve the claim. Consultant and City agree that both parties shall try to resolve the dispute amicably and at a Project level prior to the commencement of litigation or arbitration.
- c. Waiver; Severability. Waiver of any default or breach under this Agreement by City will be effective only in the specific instance and for the specific purpose given. Any such waiver does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any term or provision of this Agreement 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 will not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held invalid.
- d. Amendments. Any amendments, consents to, or waivers of the terms of this Agreement shall be in writing and signed by the authorized representatives of both parties.
- e. Media/Publications. Consultant shall issue no news release, press release, or other statement to members of the news media or any other publication regarding this Agreement or the Project within one year of Project completion without City's prior written authorization. Consultant shall not post or publish any textual or visual representations of the Project without approval of City.
- f. Nondiscrimination. Consultant shall comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement.
- g. Successors in Interest. This Agreement will bind and inure to the benefit of the parties, their successors, and approved assigns, if any. Except as previously disclosed and approved, Consultant shall not enter into any subconsultant agreements for any of the Services or assign or transfer any of its interest in this Agreement without City's prior written consent.
- h. No Third-Party Beneficiaries. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third persons unless they are individually identified by name in this Agreement

and expressly described as intended beneficiaries of this Agreement.

- i. Entire Agreement. When signed by the authorized representatives of both parties, this Agreement (and the attached exhibits) is their final and entire agreement. As their final and entire expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.
- j. Notices and Communications. Notices and communications between the parties to this Agreement must be sent to the following addresses:

City

Consultant

[Name, title, and address]

[Name, title and address]

The party giving notice will provide notice in writing, dated and signed by a duly authorized representative of that party. Notice is not effective for any purpose whatsoever unless served in one of the following manners:

1. If notice is given by personal delivery, it is deemed delivered on the day of delivery.
2. If notice is given by overnight delivery service, it is deemed delivered one day after the date deposited, as indicated by the delivery service.
3. If notice is given by United States mail, it is deemed delivered three days after the date deposited, as indicated by the postmarked date.
4. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it is deemed delivered on the day the notice is signed for.

I HAVE READ THIS AGREEMENT, INCLUDING ALL EXHIBITS. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS AGREEMENT, AND TO BE BOUND BY ITS TERMS ON BEHALF OF THE PARTY I REPRESENT.

CONSULTANT

CITY

Consultant Name

City of Gearhart

Signature

Signature

Consultant Printed Name and Title

City Official Printed Name & Title

Date of Signature

Date of Signature

EXHIBIT A
PAYMENT SCHEDULE

A. COMPENSATION

[Insert Fee information]

B. PAYMENT METHOD

1. Consultant shall submit to City, at the address shown below, all monthly invoices in a form approved by City:

City of Gearhart
Attn: Accounts Payable
PO Box 2510
Gearhart, OR 97138

2. Invoices shall be detailed and include the following:
- a. Itemization of all Services components and the percentages completed;
 - b. Services previously billed and currently invoiced;
 - c. Previously approved contract amendments, whether or not they are being invoiced; and
 - d. Separate itemization of any reimbursables that are billable but not a part of the base compensation under this Agreement.
3. Upon City request, Consultant shall provide to City documentation showing proof that payments were made to its vendors and subconsultant(s).
4. Upon receipt and approval of Consultant's properly submitted invoices, City agrees to make payments within 30 days of receipt.

EXHIBIT B

INSURANCE REQUIREMENTS

A. MINIMUM INSURANCE LIMITS. Consultant shall procure, prior to commencement of the Services of this Agreement, and shall maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees, and subconsultant(s). Consultant's liabilities, including but not limited to Consultant's indemnity obligations under this Agreement, will not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement, and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by City. Coverage shall be at least as broad as the following scopes and limits:

1. **Commercial General Liability ("CGL")** insurance covering injury and property damage on an occurrence basis. This coverage shall include contractual liability insurance for the indemnity provided under this contract. The CGL policy shall include the following coverages with limits of no less than the limits shown below:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	\$3,000,000
Personal & Advertising Injury	\$3,000,000
Each Occurrence	\$2,000,000
Fire Damage (Any one fire)	\$500,000
Medical Expense (Any one person)	\$5,000

2. **Commercial Automobile Liability** insurance including coverage for all owned, hired, and non-owned vehicles with a combined single limit of no less than \$2,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation Liability** insurance meeting statutory requirements. Consultant shall require and ensure that each of its subconsultants or subcontractors comply with this requirement.
4. **Employers' Liability** insurance with a limit of no less than \$500,000 for each accident.
5. **Professional Liability** insurance with limits of no less than \$2,000,000 per occurrence and \$2,000,000 aggregate and subject to no more than \$10,000 per claim deductible. Consultant shall maintain professional liability coverage through completion of construction of the Project and two years thereafter.

City reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

B. DEDUCTIBLES AND SELF-INSURANCE RETENTION. Consultant shall inform City in writing if any deductibles or self-insured retention exceeds \$10,000. At its sole discretion, City may (1) accept the higher deductible, (2) require Consultant to insure such deductibles or self-insured retention as respects City, its consultants, councilors, officers, directors, officials, employees, agents, representatives, and volunteers, or (3) require Consultant to provide a surety bond guaranteeing Consultant's payment of deductible or self-insured losses and related investigations, claim administration, and defense expenses.

C. OTHER INSURANCE PROVISION. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. City and its consultants, councilors, officers, directors, officials, employees, agents, representatives, and volunteers ("Additional Insureds") are to be covered as Additional Insureds with respect to liability

arising out of activities performed by or on behalf of Consultant; work product and completed operations of Consultant; premises owned, occupied, or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage will contain no special limitations on the scope of protection afforded to the Additional Insureds.

2. For any claims related to the Project, Consultant's insurance coverage shall be the primary insurance with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Consultant's insurance and not contributory.
3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, will not affect coverage provided to the Additional Insureds.
4. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage will not be suspended, voided, or canceled by either party, or reduced in coverage or in limits, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to City.

D. ACCEPTABILITY OF INSURERS. Insurance shall be placed with insurers admitted in Oregon with a current A.M. Best's rating and FSC no lower than A-VII. Consultant shall inform City in writing if any of its insurers have a rating and FSC lower than A-VII. At its sole discretion, City may (1) accept the lower rating or (2) require Consultant to procure insurance from another insurer.

E. VERIFICATION OF COVERAGE. Consultant shall furnish City with:

1. Certificates of insurance showing maintenance of the required insurance coverage; and
2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements shall be received and approved by City before Services commence.

EXHIBIT C
SCOPE OF WORK

DRAFT