



**CITY OF BEAVERTON
OREGON**

REQUEST FOR PROPOSAL

**LIBRARY SPACE PLANNING
Solicitation #2305-10B**

**DATE & TIME PROPOSALS ARE DUE:
AUGUST 27, 2009, at 4:00 PM**

Respondents must submit one (1) original and three (3) complete copies of their proposal

Mayor

Denny Doyle

City Councilors

Cathy Stanton

Betty Bode

Catherine Arnold

Bruce Dalrymple

Marc San Soucie

SUBMIT PROPOSAL TO:

City of Beaverton
Purchasing Division
4755 SW Griffith Drive
Beaverton, OR 97005
503-526-2228

This document is available in alternate formats, such as large print, audiotape, oral presentation and electronic format.
To request alternate format, call the City of Beaverton Purchasing Division at 503-526-2228 or TDD 503-526-263.

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SECTION 1: INTRODUCTION

The Beaverton City Library, located at 12375 SW Fifth St, Beaverton, Oregon, a department of the City of Beaverton, Oregon is accepting proposals from qualified space planners that have an understanding of Library specific needs to review library space usage in order to maximize utility of space, increase shelving for collections, improve work flow efficiency, and mitigate crowding and congestion. The resulting recommendations must keep within a reasonable design and ambiance of the architecture. Along with space layout, the project should include estimated costs for the changes recommended, broken down by work area. The intent of this project is to develop workable solutions with which the library can prioritize and develop future budget requests. This project should be concluded by December 15, 2009 so that recommendations can be included in the FY10-11 budget process.

SECTION 2: PROPOSER'S SPECIAL INSTRUCTIONS

A. PROCUREMENT TIMELINE

The City reserves the right to modify this schedule at the City's discretion. Proper notification of changes will be made to all interested parties.

Release of Proposals	July 21, 2009
Deadline for Protests or Request for Specification Changes	August 14, 2009
Deadline for Submission of Proposals	August 21, 2009 @ 4:00 PM
Evaluation Process	August 24-28, 2009
Commencement of Services	September 1, 2009

Pre-Proposal Walk-Through: A non-mandatory pre-proposal walk-through will be available for firms to see the Library facilities. Please contact Ed House, Library Director to arrange a day and time.

B. PROCUREMENT METHOD

The City is conducting this RFP pursuant to ORS 279A.050 and Beaverton Purchasing Code section 46-0100. The City seeks proposals that will enable the City to determine which Space Planning Consultant will best meet the City's needs. The City expects this RFP will result in a single a contract with a single vendor.

C. PROPOSAL SUBMITTAL

1. Submit a minimum of one (1) original and three (3) copies of response to this proposal. **Proposals must be signed and submitted no later than 4:00 PM on August 21, 2009**, to the address below. The submission and signing of a proposal shall indicate the intention of the contractor to adhere to the provisions described in this Request for Proposal (RFP).
2. Proposals may be submitted by faxed, emailed, by hand or by U.S. Postal Service. The name and address of the proposer should appear on front cover along with the proposal title.
Fax No.: 503-526-2229
Email Address: tmuralt@ci.beaverton.or.us

All responses to this request that are mailed through the United States Postal Service shall be addressed to Terry Muralt, Purchasing Agent, PO Box 4755, Beaverton, OR 97076. Hand-delivered responses, or responses not sent through the USPS, shall be delivered to the Finance Department - Utility Billing Counter, 2nd Floor, City of City of Beaverton, 4755 SW Griffith Drive, Beaverton OR 97005.

4. Proposals should include the Signature Page (Section 7) completely filled out and signed.
5. It is the Proposer's responsibility to ensure that proposals are received on or before the stated closing time. Proposals received after the designated time will not be considered. There will be no formal opening.

D. INTERPRETATIONS AND ADDENDA

All questions regarding this project proposal shall be directed to Terry Muralt, Purchasing Agent, at either 503-526-2229 or tmuralt@ci.beaverton.or.us. If necessary, interpretations or clarifications in response to such questions will be made by issuance of an addendum to all prospective Proposers within a reasonable time prior to proposal closing, but in no case less than 72 hours before the proposal closing. If an addendum is necessary after that time, the City, at its discretion, can extend the closing date.

Any addendum issued as a result of any change in the RFP must be acknowledged on the "Signature Page" with proposal.

Only questions answered by formal written addenda are binding. Oral and other interpretations or clarifications are without legal effect.

E. PROTESTS

Address any protests to:

City of Beaverton
Terry Muralt, CPPB, Purchasing Agent
Finance Department
4755 SW Griffith Drive
Beaverton, OR 97005

and mark the outside of the envelope:

**Library Space Planning: Specification/Term Protest
Closes: August 21, 2009 @ 4:00 PM**

1. RFP Protest or Request for Change of Specifications or Terms

A proposer who believes any proposal specifications or terms detailed in this RFP (including its Addenda, if any) are unnecessarily restrictive or limit competition may submit a protest or request for change, in writing, to the Purchasing Office. A request for change regarding the terms of this RFP may be submitted via facsimile. Any protest or request for change regarding the terms of this RFP shall include the reasons for the protest or request and shall detail any proposed changes to the specifications or terms. The Purchasing Office shall respond to any

protest or request for change and, where appropriate, shall issue any revisions, substitutions, or clarification via addenda to all interested Proposers. To be considered, protests or requests for change regarding the terms of this RFP must be received by August 14, 2009. If a timely protest or request for change regarding the terms of this RFP is received, the proposal opening date may be extended if necessary to allow consideration of the protest or request for change and issuance of any necessary addenda to the proposal documents.

F. PROPOSALS NOT AVAILABLE FOR PUBLIC INSPECTION AT THE OPENING.

In accordance with ORS 279B.060(5)(a) only the names of the proposers shall be disclosed at the opening. Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.

G. BUSINESS LICENSE/TAXPAYER ID NUMBER

A Proposer awarded a contract shall obtain a City business license as required by Beaverton Code section 7.01 prior to beginning work under this contract and must pay all fees due under the Business License Law during the term of the contract.

A Proposer awarded a contract shall complete an IRS Form W-9 for the City and provide the City with either the Proposer's Social Security Number or federal taxpayer ID number. This number is requested pursuant to BPC 47-0636 of the Beaverton Purchasing Code (Resolution 3917, as amended). Social Security numbers provided pursuant to this requirement will be used for the administration of state, federal and local tax laws.

H. CONTRACT ADMINISTRATOR

The Contract Administrator will be Edward House, Library Director who can be reached by telephone at 503-526-3705 or by e-mail at ehouse@ci.beaverton.or.us.

I. FORM OF CONTRACT

A copy of the standard Personal Service contract which the City expects the successful firm or individual to execute is included as Attachment "A". The contract will incorporate the terms and conditions from this RFP document and the submitted proposal. **Proposers taking exception to any of the contract terms or conditions must submit a request for a change standard contract terms and conditions WITH THEIR PROPOSAL, or the exceptions will be deemed waived.** The City Attorney will review all requests for changes and may or may not accept the requested exceptions. The City is hereby expressly authorized to engage in serial negotiation of the excepted contract terms pursuant to BPC 47-0262(C) (2) (a) (iii).

J. TERM OF CONTRACT & AVAILABILITY OF FUNDS

A contract awarded as a result of this RFP is expected to commence on or about September 1, 1009 and end on or before December 31, 2009. Any contract awarded pursuant to the RFP that has a term of more than one year must include a non-appropriation clause. Continuation or extension of the contract after the end of the fiscal period in which the contract takes effect shall be contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue the contract, City may terminate the contract without further liability by giving Proposer reasonable notice.

K. PUBLIC RECORDS

All proposals and all protests shall become the property of the city and a public record, subject to public disclosure as provided under Oregon's Public Records Law. During the evaluation and selection process, city shall treat proposals as exempt from public inspection. The city shall treat all protests as exempt from public inspection until the protest is finally resolved or the period ends. After the selection process is completed and notice of intent to award a contract has issued, city shall treat proposals as open to public inspection, unless exempt from public inspection by provision of applicable state or federal law.

If it is necessary to submit trade secrets or other confidential information in order to comply with the terms and conditions of this RFP, Proposers shall label any information that it wishes to protect from disclosure to third parties as a trade secret under ORS 192.501(2) with the following: **"This material constitutes a trade secret under ORS 192.501(2) and is not to be disclosed except as required by law."** Each page containing the trade secret or other confidential information must be so marked.

The City shall take reasonable measures to hold in confidence all such labeled information, but shall not be liable for release of any information when required by law or court order to do so, whether pursuant to the Oregon Public Records Law or otherwise and shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

In submitting a proposal, each proposer agrees that the city may; (a) reveal any trade secret or other confidential materials contained in the proposal to city staff and to any outside consultant or third party who is hired by the city and (b) post the proposal on the city's intranet for purposes related to its evaluation and ranking. Furthermore, each proposer agrees to indemnify and hold harmless the city and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the proposer has designated as a trade secret and/or as confidential information. Any proposer that designates its entire proposal as a trade secret may be disqualified.

L. NONDISCRIMINATION

The consultant agrees that, in performing the work called for by this proposal, consultant shall comply with all federal, state and local civil rights and rehabilitation laws prohibiting discrimination because of race, sex, national origin, religion, age or disability, and shall comply with all applicable provisions of ORS 279C.500 through 279C.565.

M. RECIPROCAL PREFERENCES

In accordance with BPC 46-0310 when evaluating proposals pursuant to BPC 47-0255, BPC 47-0257 or BPC 49-0390 the City shall add a percentage increase to the proposal of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Proposer in the state in which the Proposer resides.

The City shall rely on the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Proposer's state gives preference to in-state Proposers, and (ii) the amount of such preference.

SECTION 3: BACKGROUND

The Beaverton City Library located at 12375 SW Fifth St, Beaverton, Oregon, opened to the public in September 2000. The 69,000 square foot facility averages over 2,000 users per day. Over 2,300,000 items are circulated per year. After nine years of heavy use and in preparation for the next decade, the library needs to reassess its allocation of space to accommodate growing collections, changing technologies, patron usage and material workflow.

SECTION 4: SCOPE OF WORK/ PROJECT SPECIFICATIONS

The Beaverton City Library, a department of the City of Beaverton, Oregon is accepting proposals from qualified space planners that have an understanding of Library specific needs in order to maximize utility of space, increase shelving for collections, improve work flow efficiency, and mitigate crowding and congestion. The resulting recommendations must keep within a reasonable design and ambiance of the architecture. Along with space layout, the project should include estimated costs for the changes recommended, broken down by work area. The intent of this project is to develop workable solutions with which the library can prioritize and develop future budget requests. This project should be concluded by December 15, 2009 so that recommendations can be included in the FY10-11 budget process.

Design services shall include:

1. Review existing offices. City will provide a copy of as-builts and architectural plans to the awarded consultant.
2. Meetings with library management and staff.
3. Identify and incorporate current and future City and Department-specific requirements.
4. Along with space layout, the project should include estimated costs for the changes recommended, broken down by work area.

A. SPACE PLANNING PROCESS

As part of the space planning process the awarded consultant will be expected to hold a number of meetings with library management and staff. At a minimum there will need to be a meeting with the full management team to review the library-wide issues, followed by meetings with each work group. The Library Director will sit in on all meetings. The consultant shall submit a “draft plan” that will be reviewed by the Library Management Team. The Library Management team may propose changes to the “draft plan” and will work with the consultant to develop a “final plan”. The “final plan” will then be submitted to the Library Director for final approval.

B. AREAS OF SIGNIFICANT CONCERN

There are some areas of the library that may be termed “areas of significant concern” where space and functionality are at a critical point. The list below provides a brief overview of those areas:

1. Both Floors:

- Additional shelving space – After nine years of adding materials to our collections the shelves are full. The library needs to add additional shelving space for most collections.

- Large Print collection – the Large Print collection was moved upstairs last year to accommodate the growing collection. However, we have found that many large print users (a more elderly segment of our clientele) find it difficult to travel upstairs and across the library. If possible, we would like to find a better location on the first floor for this collection.
- Mystery collection – We would prefer to have all adult book collections including the mystery collection (except large print) located upstairs. Finding room for the mystery collection along with additional space for other collections to expand is a significant goal.
- Seating – There needs to be a variety of seating available throughout the library including table seating and more comfortable seating.

2. First Floor:

- Circulation desk – The Circulation desk takes up significantly more floor space than needed, especially since the holds (reserved materials) have been moved from behind the circulation desk and onto the public floor. Minimizing the footprint of the circulation desk, using modular stations will allow more space for other needs.
- Registration Station – would allow for a place for patrons to fill out card applications and could hold comment and donation boxes. This desk would not be staffed.
- Self-check machines – The self-check machines are very popular and heavily used. They need to be re-arranged so that the queuing lines are intuitive and users are not interfering with the traffic flow from the library entrance, the stairwell, the circulation desk and the display areas.
- General Information Desk and on-line public access computers (OPACs) – Provide for a staffed desk close to the security gates to monitor exiting traffic. Provide some OPAC stations in the vicinity of a staffed desk. Provide storage and display space for handouts and fliers.
- Technical Services work space – the workroom is undersized for the amount of work being performed. Workflow and the room layout need to be assessed.
- New, in-demand and recently returned book display area – these are popular items and collections that users often browse first when coming to the library. They need to be placed in a visible high traffic location without adding too much congestion.
- Thematic Displays – This area is used to market various collections throughout the year and needs to be in a high traffic and visually appealing area without adding too much congestion.
- Media (Books-on CD, DVDs, Music CDs, etc) – We would like to have the various media located in a contiguous area that allows for more visual control by staff.
- Holds (reserves) shelving – The library's self pick-up of holds shelving has gotten crowded. We need to find a way to accommodate more growth and hopefully not have to use the lowest shelf that are so close to the ground. The Holds shelving should be located in the vicinity of an appropriate service desk.
- Circulation I workroom – The check-in workflow functions need to be streamlined. Handling returned materials, the WCCLS courier deliveries, holds and other functions in a limited space is very challenging. Space must be able to accommodate the possibility of using RFID or similar technologies within a few years. One possibility would be to remove the north locker wall and open the space into the media check-in room. There needs to be a larger cart parking area and an expanded check-in counter
- Children's workroom is very crowded and needs space for two more desks.

3. Second Floor:

- Public access computers – Currently the public access Internet and word processing workstations are scattered throughout the second floor. We would like to group them into one area and provide a staff desk/workstation to serve the public access computer users. This may include relocation of the reservation and print control station. We will be adding two 15-minute express Internet stations and two to four workstations dedicated to subscription database research that should be located close to the reference desk.
- Periodicals and microfilm area – This area seems to have a lot of underused space. Microfilm cabinets have been included in this year's budget so that we can eliminate the skinny microfilm shelving and free up floor space. Periodical shelving should be reconfigured and perhaps, in part, mounted to the walls to free up additional floor space.
- There is a need to maximize table space both for readers and wireless users (who will need plug-ins). More comfortable seating needs to be included in the mix.
- There is need for a display area upstairs – a place to market programs, flyers, etc.
- Young adult area needs more room for materials and a door directly into the YA staff workroom for safety and better visual oversight of the activities in the YA room

C. SHELVING AND FURNITURE

All recommended additional shelving and furniture must be compatible with existing shelving and furniture including style, color, finish, etc. The Library has used SpaceSaver Specialists, Inc for all its shelving and surrounds for its original and subsequent shelving needs.

SECTION 5: PROPOSAL FORMAT & CONTENT

Proposals must address all submission requirements set forth in this RFP, and must describe how the services will be provided. Page limits are noted, when relevant, and assume 8 1/2 x 11 – inch paper and single-spaced lines. Unless otherwise specified, no particular form is required. Proposals that merely offer to provide services as stated in this RFP will be considered non-responsive.

A. PROPOSAL FORMAT & ADMINISTRATIVE REQUIREMENTS

The City's proposal format and administrative requirements are set out below. These are intended to facilitate the City's ability to quickly and accurately evaluate proposals. Failure to follow these format and administrative requirements may affect the scoring of proposals.

Introduction:

1. Page Limit

There is no page limit on this RFP.

2. Cost of Preparing Proposals

All costs incurred in preparing and submitting a proposal in response to the RFP is the responsibility of the Proposer and shall not be reimbursed by Agency.

3. Proposal Validity Period

Each proposal shall be irrevocable for a period of seventy (60) days from the Proposal Opening Date.

4. Commitment to Sustainability

In an effort to promote greater use of recycled and environmentally preferable products and to minimize waste, the City encourages all proposals submitted in hard copy be prepared simply and economically. The use of special bindings, unnecessary colored displays and irrelevant promotional materials is neither required nor desired. Double-sided printing on recycled paper and/or the use of reusable products is preferred.

5. Title Page

Include a title page with the submitted proposal. Include the following information on the title page: (1) the RFP Title; (2) the name, title, address, telephone number, fax number, e-mail address of Proposer's primary contact person; (3) and the date of submission. Proposers may include other information on the title page in addition to the listed information, but not in lieu thereof.

6. Transmittal Letter

Include a transmittal letter with the proposal, not exceeding two (2) pages in length. The letter should identify by name and contact information the one person proposer wishes the city to contact after proposals have been evaluated, scored and ranked. The letter may include any other information or insights the proposer deems relevant, but in no instance may the letter exceed two pages in length.

7. Table of Contents

Include a table of contents with the submitted proposal. All material items comprising the proposal should be clearly identified and able to be easily located.

8. Signature Page

The Proposer must sign and submit the Signature Page (see Section 7 of this RFP). The submission and signing of the signature page indicates the intention of the Proposer to adhere to the provisions described in this RFP.

B. SUBSTANTIVE REQUIREMENTS OF THE PROPOSAL

The following information is requested to allow the City to evaluate Proposer responsibility and responsiveness to perform work described under the "Scope of Work" heading (see Section 4). If a contract is awarded, City shall award the contract to the responsible Proposer whose proposal it determines in writing to be the most advantageous to the City based on the evaluation process and evaluation factors described in this RFP, any applicable preferences described in ORS 279A.120 and 279A.125 and, when applicable, the outcome of any negotiations authorized by the RFP. Other factors may not be used in the evaluation.

Your written proposal should include at a minimum the following information:

1. Experience

Provide a description of the firm's experience in space planning that address the key elements of the proposed scope of work (i.e., maximize utility of space, improve work flow efficiency and mitigate crowding and congestion). Proposer must have a minimum of 3 years experience in similar space planning that addresses the key elements listed above. Include dates of past projects and who on the project team had direct involvement in the project.

2. Cost

Provide a detailed project budget for the design services. Please state assumptions clearly. The City may choose to ask the consultant to assist in the implementation of the design. Please include an hourly rate for this service.

3. Proposer Qualifications

Interested firms must submit statements of qualifications including the following:

- Background of the firm. Include a brief history of the firm and types of services the firm is qualified to perform.
- Qualifications of the firm in performing this type of work. Provide a minimum of 3 examples of related experience and references for similar projects in the last 5 years. Consultant may submit illustrative samples of past projects. Include the contact name(s), address, and telephone number for each reference.
- Project team and their individual qualifications. Identify individuals and sub-consultants (if any) who will complete this work, their experience and their individual qualifications.
- Proposals shall identify the primary contact person that will serve as the contract manager with responsibility to insure the success of the contract and include the relevant qualifications and experience of the individual. Include a resume.

6. Project Approach & Understanding

Interested firms must submit statements of project approach and understanding of the scope of services required for the project plus any refinements your firm feels are warranted. Highlight any innovative ideas Consultant may have to reduce costs or produce a better product.

- Describe your expectations of the city in this project.

7. Time Requirements

Demonstrate a practical approach to meeting the City's specific deadlines by providing detailed information as to how the firm proposes to meet the timelines and reporting deadline requirements of the project.

8. Additional Services

Provide a brief description of any other services that your firm could provide the City and an approximation of the hourly charge for each service of this type. Such services would be contracted for on an "as needed" basis, to be provided and billed for separately.

SECTION 6: PROPOSAL EVALUATION PROCEDURES

A. EVALUATION CRITERIA

A selection committee consisting of city staff with relevant expertise in the subject matter of this solicitation will review submitted proposals. Committee members will evaluate proposals to determine which one best meets the needs of the City. Evaluation will be based on the following described criteria not just price. Award will be made to the highest ranking consultant.

All submittals will be evaluated on the completeness and quality of the content. Only those Proposer’s providing complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail.

EVALUATION CRITERIA	MAXIMUM POINTS
1. Experience and References in similar projects	45
2. Demonstrated capability to meet the City’s time requirements.	15
3. Project Approach & Understanding	15
4. Cost	25
Maximum Total Points	100

B. CLARIFICATION OF PROPOSALS

The City reserves the right to obtain clarification of any point in a firm’s proposal or to obtain additional information necessary to properly evaluate a particular proposal, but will not, in any way, provide an opportunity to change any fee amount originally proposed. Failure of a Proposer to respond to such a request for additional information or clarification could result in rejection of the firm’s proposal.

C. AWARD RECOMMENDATION

Award will be made to the responsible offeror whose proposal best meets the needs of the City as set forth herein.

D. RESERVATION OF RIGHTS

City reserves all rights regarding the RFP, including, without limitation, the right to:

- a. Amend, delay or cancel the RFP without liability if City finds it is in the best interest of the City to do so (see generally ORS 279B.100);
- b. Reject any or all proposals received upon finding that it is in the best interest of the City to do so (see generally ORS 279B.100);
- c. Waive any minor informality or non-conformance with the provisions or procedures of the RFP, and seek clarification of any proposal, if required;
- d. Reject any proposal that fails substantially to comply with all prescribed RFP procedures and requirements;
- e. Negotiate a Statement of Work based on the Scope of Work described herein and to negotiate separately in any manner necessary to serve the best interest of the public;
- f. Amend any Contracts that are a result of the RFP; and
- g. Engage consultants by selection or procurement independent of the RFP process or any Contracts or agreements under it to perform the same or similar services.

Although price is a consideration in determining the apparent successful Proposer, the intent of the RFP is to identify a proposal from a Proposer that has a level of specialized skill, knowledge and resources to perform the work described in the RFP. Qualifications, performance history, expertise, knowledge and the ability to exercise sound professional judgment are primary considerations in the selection process. The Proposer with the lowest Price proposal may not necessarily be awarded a contract. City reserves the sole right to determine the best proposal.

SECTION 7: SIGNATURE PAGE

This form should be submitted with proposal

This page must be signed with the full name and address of the Proposer company submitting the response; if a partnership, by a member of the firm with the name and address of each member; if a corporation, by an authorized officer thereof in the corporate name.

The undersigned verifies that he/she is a duly authorized officer of the company, and that his/her signature attests that information provided in response to this Request for Proposal Project # _____-__ is accurate.

The undersigned certifies that the proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

The undersigned certifies that all addenda to the specifications have been received and duly considered and that all cost adjustments associated with the addenda are reflected in this proposal.

Addendum No(s)._____ Acknowledged? YES / NO

Resident Proposer?* YES / NO

Proposer hereby makes this proposal to furnish goods and services at the price(s) indicated herein in fulfillment of the requirements and specifications of the City as stated in the Request for Proposals.

Signature of Authorized Official

Date

Printed Name

Telephone Number (with area code)

Title

E-mail Address

Firm

Address

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

ATTACHMENT "A" PERSONAL SERVICE CONTRACT

**PERSONAL SERVICES CONTRACT #2305-10
TO PROVIDE PERSONAL SERVICES RELATING TO:
SPACE PLANNING FOR THE BEAVERTON CITY LIBRARY**

THIS CONTRACT FOR PERSONAL SERVICES ("Contract") is entered into between the City of Beaverton, Oregon, located at 4755 SW Griffith Drive, P.O. Box 4755, Beaverton, Oregon 97076-4755 ("City") and _____ located at _____ ("Contractor"). The City's primary supervisor for this Contract ("Contract Administrator") is Ed House, Library Director.

THE PARTIES HEREBY AGREE THAT:

1. EFFECTIVE DATE; DURATION. This Contract shall become effective on the date this Contract has been signed by every party hereto and, approved by legal counsel for the City. Unless terminated or extended, this Contract shall expire when City accepts Contractor's completed performance or on _____, 2009, whichever date occurs first.

2. STATEMENT OF WORK. In accordance with the terms and conditions of this Contract, Contractor shall perform the services as scheduled ("Work") and as set forth in Contractor's proposal dated _____, attached hereto as Exhibit "A" and incorporated herein by this reference.

3. CONTRACT DOCUMENTS. In the event of a conflict between or among the terms of this instrument, any proposal and/or request for proposals, the following order of precedence shall prevail: (a) this instrument, (b) attached exhibits; (c) the request for proposal, (d) the proposal. Nothing herein shall be considered as an acceptance of the terms of a proposal if the terms of the proposal conflict or are otherwise incompatible with the express terms contained herein or in the City's request for proposal.

City's Request for Proposal dated _____, is attached hereto as Exhibit "B" and incorporated herein by this reference. (*Attach RFP if Contract results from RFP solicitation.*)

4. CONSIDERATION. City shall pay Contractor in progress payments based on monthly invoices from Contractor, together with a progress report containing a summary of the Work completed for which payment is requested for the "MAXIMUM, NOT-TO-EXCEED Amount" fee of \$ _____ as shown in Exhibit A. Payment shall be made within 30 days after receipt of Consultant's invoice.

5. BILLING AND PAYMENT SCHEDULE. At least thirty (30) days prior to due date of payment, Contractor shall prepare and submit to **THE CITY OF BEAVERTON, ATTENTION: LIBRARY DEPARTMENT, PO BOX 4755, BEAVERTON, OREGON 97076**, an invoice of services rendered. Payment shall be made upon Contract Administrator's approval and acceptance of Contractor's completed Work described herein, whereupon Contract Administrator shall submit a payment request to City's Finance Department. If this Contract specifies an end product, an amount up to 10 percent of the total sum of money to be paid for the satisfactory accomplishment of the Work may be withheld until all required Work is completed and accepted. If charges are made for services performed and those charges are to be paid from grant funds, the services shall relate directly to the grant from which the funds are expended. Interim payments to Contractor for partial completion of tasks or services may be made only upon prior written authorization of City. When made, interim payment shall release City from any further obligation for payment to Contractor for Work performed or expenses incurred as of the date of the invoice of services rendered.

6. AVAILABILITY OF FUNDS. City has sufficient funds currently available and authorized for expenditure to finance costs of this Contract within City's current fiscal period; provided, however, that continuation or extension of the Contract after the end of the fiscal period in which this Contract is written is contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue this Contract, or if City abolishes the program for which benefit this Contract was executed, City may terminate this Contract without further liability by giving Contractor not less than 30 days' notice. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.

7. ASSIGNMENT AND SUBCONTRACTORS. Contractor shall not assign, sell, subcontract, dispose of or transfer rights or delegate duties hereunder, either in whole or in part, without the City's prior written consent; provided, however, that money due to Contractor may be assigned, if the City is given written notice thereof, but any assignment of money shall be subject to all proper setoffs and withholdings in favor of the City. The City may rescind this Agreement if an assignment is made without the prior written consent of the City. The rights hereunder may not be transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. The City may rescind this agreement if transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. In no instance shall City's consent to an assignment of rights or delegation of duties relieve Contractor of any obligations hereunder. Any assignee, transferee or subcontractor shall be considered the agent of the Contractor and be bound to abide by all provisions of this Contract. Contractor, and its surety, if any, shall remain liable to City for complete performance of this Contract as if no such assignment, sale, subcontracting, disposal, transfer or delegation had occurred, unless City otherwise agrees in writing. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

8. TERMINATION. The parties may effect termination of this Contract in the manners indicated:

- a. **Parties' Right to Terminate for Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.
- b. **City's Right to Terminate for Convenience.** City may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Contractor.
- c. **City's Right to Terminate for Cause.** City may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as City may establish in such notice, upon the occurrence of any of the following events:
 - (i) City fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;
 - (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or City is prohibited from paying for such work from the planned funding source;
 - (iii) Contractor no longer holds any license or certificate that is required to perform the work; or
 - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of City's notice, or such longer period as City may specify in such notice.
- d. **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract upon 30 days' notice to City if City fails to pay Contractor pursuant to the terms of this Contract and City fails to cure within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice.
- e. **Remedies.** (i) In the event of termination pursuant to subsections a, b, c(i), c(ii) or d, of this Section, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work

multiplied by the percentage of work completed and accepted by City, less previous amounts paid and any claim(s) which City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to City upon demand. (ii) In the event of termination pursuant to subsection c(iii) or c(iv) of this Section, City shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under subsection c(iii) or c(iv) of this Section, the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to subsection b of this Section.

- f. **Contractor's Tender upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to City all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon City's request, Contractor shall promptly surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the work.

9. FORCE MAJEURE. Neither party shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods earthquakes, fires, acts of God, acts of the public enemy, epidemic, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priorities, severe weather, or any other uncontrollable or unforeseeable act or circumstance beyond a party's reasonable control and without the fault or negligence of the party. The affected party, however, shall make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. In the event of such delay, the party delayed shall give written notice of the delay and the reason therefor to the other party within 30 days after the delayed party learns of the delaying event. An extension of time for any such cause shall be for the period of duration of the cause. Delays under this paragraph shall not be the basis for additional compensation payable to the Contractor.

10. MODIFICATION. Any modification of the provisions of this Contract shall not be enforceable unless first reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Contractor, which increases or decreases the cost to City over the agreed sum or changes or modifies the Statement of Services or Delivery Schedule. Any such modification shall be effective only in the specific instance and for the specific purpose identified in the modification. In the event that Contractor receives any communication of whatsoever nature from City that Contractor contends gives rise to any modification of this Contract, Contractor shall, within 15 calendar days after receipt, make a written request for modification to City. Contractor's failure to submit such written request for modification in a timely manner is a basis upon which City may refuse to treat said communication as a modification. In connection with any modification to the Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment and other costs. If Contractor incurs additional costs or devotes additional time on project tasks which were reasonably expected as part of the original Contract or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has agreed to pay.

11. ACCESS TO RECORDS. Contractor shall maintain all books, documents, papers and records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. City, state and federal government, and their duly authorized representatives, shall have access to Contractor's books, documents, papers, plans, writings and records that are directly pertinent to this Contract for the purpose of performing examinations and audits and making excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three years from the date of Contract expiration, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to

this Contract, whichever date is later. Contractor is responsible for any audit discrepancies involving deviation from the terms of this Contract and for any commitments or expenditures in excess of amounts authorized by City. The state and federal governments and their duly authorized representatives are intended beneficiaries of the terms of this provision.

12. COMPLIANCE WITH APPLICABLE LAWS. Contractor shall comply with all federal, state and local laws, ordinances, rules, regulations and executive orders applicable to the Work to be performed under this Contract. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules or regulations shall not relieve Contractor of these obligations or the requirements of this Contract. Without limiting the foregoing, Contractor shall comply with all federal, state and local civil rights and rehabilitation laws prohibiting discrimination because of race, color, sex, national origin, religion, age or disability, and shall comply with all applicable provisions of ORS 279A, 279B and 279C relating to public contracts. The required contract conditions of ORS 279B.220, ORS 279B.225, ORS 279B.230 and ORS 279B.235 are hereby incorporated herein by this reference and made binding upon City and Contractor. Contractor shall safeguard consumer personal information pursuant to ORS 646A.600 to 646A.628 (the Oregon Consumer Identity Theft Protection Act). The parties shall comply with any state or federal law or regulation specific to the funding source that supports this Contract.

Contractor shall obtain a City of Beaverton business license as required by BC 7.01 prior to beginning work under this Contract. Contractor shall provide the business license number in the space provided on the signature page of this Contract. Additionally, Contractor shall pay all fees due under the Business License Law during the full term of this contract. Failure to be in full compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law.

13. INDEPENDENT CONTRACTOR; RESPONSIBILITY FOR TAXES & WITHHOLDING. The Work to be rendered under this Contract is that of an Independent Contractor. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265 of the Oregon Tort Claims Act, and Contractor is not to be considered an officer, employee or agent of the City for any purpose. Contractor shall be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Contract. As used herein, "Independent Contractor" means that:

- a. Contractor is free from direction and control over the means and manner of providing labor or services, subject only to City's right to specify the desired results.
- b. Contractor is responsible for obtaining all required business registrations or professional occupational licenses.
- c. Contractor furnishes the tools or equipment necessary to perform the contracted labor or services.
- d. Contractor has the authority to hire and fire Contractor's employees.
- e. Contractor is registered under ORS chapter 701 to provide labor or services for which such registration is required.
- f. For labor and services performed as an Independent Contractor in the previous year, Contractor has either filed federal and state income tax returns in the name of Contractor's business or, in the alternative; Contractor has filed a Schedule C tax form as part of Contractor's personal income tax return.
- g. Contractor represents to the public that the labor or services described herein are to be provided by an independently established business.
- h. Payment to the Contractor is made upon completion or periodic completion of the performance required herein, or is made based on a periodic retainer.

Neither Contractor nor any of Contractor's agents or employees is entitled to any of the benefits (including, but not limited to, social security, workers' compensation and unemployment insurance benefits) that City provides its employees. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract. Unless Consultant is subject to backup withholding, City will

not withhold from such compensation or payments any amount to cover Contractor's federal or state tax obligations.

14. REPRESENTATIONS AND WARRANTIES; STANDARD OF CARE. Contractor represents and warrants to City that:

- a. Contractor has the power and authority to enter into and perform this Contract;
- b. When executed and delivered, this Contract shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- c. If Contractor provides personal services under this Contract, the Work under this Contract shall be performed in a good and workmanlike manner;
- d. If Contractor provides professional services under this Contract, the Work under this Contract shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill and diligence ordinarily exercised by members of the profession currently practicing under similar conditions; and
- e. Contractor shall, at all times during the term of this Contract, be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work, be duly qualified and competent.

The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

15. OWNERSHIP OF WORK PRODUCT. Contractor is an independent contractor for purposes of determining whether Contractor's work product is "work made for hire" under provisions of the U.S. Copyright Act, 17 U.S.C. §§ 101 - 810. If Contractor's work meets the definition of a work made for hire by an independent contractor, then the work shall be considered a work made for hire and the City shall be deemed the work's author. If Contractor's work does not meet the definition of work made for hire by an independent contractor, then Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor waives and releases all rights relating to the use of the work described in or encompassed by the Statement of Work of this Contract, including any rights arising under 17 U.S.C. § 106A. Reuse of work product by City or others for purposes outside the scope of the Statement of Work of this Contract shall be without liability to Contractor. If Contractor is an architect providing professional architectural services, any plans, drawings and other work product produced within the scope of work of this contract are the property of the Contractor; by execution of this Contract, Contractor grants the City an exclusive and irrevocable license to use that work product.

16. INDEMNITY. With regard to the Contractor's performance in connection with or incidental to the Work, but excluding its performance of professional services and the indemnification and hold harmless aspects thereto as set forth below in this Section, the Contractor shall defend, indemnify, protect and hold the City, its officials, employees, agents and volunteers harmless from and against any and all claims, suits, actions, losses, costs or judgments of any nature for damages or injuries to any person or property, including injury to the Contractor and/or its agents, employees or subcontractors which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless or willful acts or omissions of the Contractor and/or its agents, employees or subcontractors, in performing Work herein, and all expenses of investigating and defending against same, including reasonable attorney fees and costs at trial and on appeal; provided, however, that the Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its officials, employees, agents and volunteers.

With regard to the Contractor's performance of professional services, Contractor shall defend, indemnify and hold harmless the City, its officials, employees, agents and volunteers from and against any and all claims, costs, suits, actions, losses, expenses and damages, including reasonable attorney's fees and costs at trial and on appeal, arising from the willful misconduct or negligent acts, errors or omissions of the Consultant and/or its agents, employees or subconsultants associated with the Work.

17. INSURANCE. Contractor, at Contractor's own expense, shall procure and maintain in full force and effect for the duration of Contractor's Work under this Contract the types and coverage amounts of insurance conforming to these minimum requirements:

**WORKERS' COMPENSATION INSURANCE
AND EMPLOYER LIABILITY INSURANCE**

Required; **Not Required.**

Workers' Compensation Insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work in Oregon, unless existence of extraterritorial coverage is established pursuant to ORS 656.126(3). All Contractors and subcontractors required to procure and maintain Workers' Compensation Insurance shall also procure and maintain in full force and effect for the duration of Contractor's or subcontractor's Work under this Contract Employer Liability Insurance with a combined single limit, or the equivalent, of not less than \$500,000 each employee per accident for bodily injury by accident or disease.

Contractor shall require and ensure that each of its subcontractors who provide labor or services in connection with this Contract operates in compliance with ORS 656.017 by providing Oregon workers' compensation coverage for all their subject workers. Contractor shall require proof of such Workers' Compensation Insurance and Employer Liability Insurance by receiving and keeping on file a certificate of insurance from each subcontractor and anyone else directly employed by either the Contractor or subcontractor.

Workers' Compensation Insurance and Employer's Liability Insurance coverage is required under this Contract of all Contractors who are employers. If Contractor is legally exempt from any requirement to provide Workers' Compensation Insurance coverage for the Work to be performed under this Contract, Contractor hereby represents that Contractor understands and agrees that under ORS 656.006(13), an "employer" is any person who contracts to pay remuneration for and secures the right to direct and control the services of any person. Contractor understands and agrees that if Contractor is exempt from coverage under ORS 656.027 and engages individuals in performance of this Contract who are not exempt from coverage under ORS 656.027, then Contractor shall provide Workers' Compensation Insurance coverage for all such individuals. If the Contractor does not provide that insurance, Contractor may be deemed a non-complying employer for purposes of Oregon law and agrees to hold City harmless from and indemnify City against any and all claims for compensation benefits made against the Contractor as a non-complying employer. If Contractor is declaring Contractor exempt from any requirement to provide workers' compensation coverage, Contractor must initial here: _____; otherwise Contractor shall procure and maintain the required insurance.

COMMERCIAL GENERAL LIABILITY INSURANCE

Required; **Not Required.**

General Liability Insurance with a combined single limit, or the equivalent, of not less than \$500,000; \$1,500,000; \$2,500,000; or \$5,000,000 covering, but not limited to, liability for personal injury and property damage. The policy shall be written on an occurrence basis on ISO Form CG 00 01, or its equivalent, and shall include blanket contractual liability coverage for the assumed liability under this Contract and broad form property damage coverage including completed operations. The City of Beaverton and its officials, employees, agents and volunteers shall be named as additional insureds under ISO Form CG 20 10 (Additional Insureds – Owners, Lessees or Consultants), or its equivalent, with respect to the Work to be provided under this Contract. The Commercial General Liability Insurance coverage required by this Contract is with respect only to the Work described in this Contract, and has no relationship to, or bearing upon, other projects of the insured. The insurance coverage is primary to any self-insurance program.

AUTOMOBILE LIABILITY INSURANCE

Required; **Not Required.**

Automobile Liability Insurance with an each accident limit, or the equivalent, of not less than \$500,000, or \$1,500,000 covering, but not limited to, liability for bodily injury and property damage, together with coverage for “any auto,” including owned, non-owned and hired autos used in connection with the performance of the Work. The policy shall be written on an occurrence basis on ISO Form CA 00 01, or its equivalent, including an omnibus insurance clause. The City of Beaverton and its officials, employees, agents and volunteers shall be named additional insureds under the policy if Contractor’s Work entails transporting people for the City. The policy cannot be excess to a self-insurance program; any deductible cannot exceed \$5000. If Contractor is declaring Contractor excused from any requirement to provide Automobile Liability Insurance coverage because Contractor does not use an automobile in connection with Work under this Contract, Contractor may initial here: _____; otherwise Contractor shall procure and maintain the required insurance.

WAIVER OF SUBROGATION

REQUIRED; **NOT REQUIRED.**

If Waiver of Subrogation is required, Contractor hereby waives Contractor’s right to recover from the City, its officials, employees, agents and volunteers for any damages arising out of Work performed under this Contract and covered by insurance. Any Commercial General Liability Insurance policy and/or Automobile Liability Insurance policy required under this Contract shall be endorsed to provide for a waiver of underwriter’s rights to subrogation as to additional insureds.

18. INSURANCE CERTIFICATION; OTHER INSURANCE REQUIREMENTS. Before Contractor commences Work under this Contract, Contractor shall furnish City, through its Risk Manager, with acceptable certificates evidencing the types, amounts and issuers of insurance coverage meeting the minimum requirements of this Contract. The certificate shall specify all of the parties who are Additional Insureds. If a certificate of insurance coverage is unavailable from a particular insurer, alternative proof of insurance coverage acceptable to City shall be arranged. Renewal certificates of insurance shall be furnished no later than 15 days before the expiration of the policy. Any deductibles or self-insured retentions must be stated on the certificate of insurance, which shall be sent to and approved by City’s Risk Manager in advance to commencement of Work under this contract.

In all instances concerning all forms of insurance required by this Contract:

- a. The insurance shall be issued by a company authorized to do insurance business in the State of Oregon or by a non-admitted insurer subject to the Oregon Surplus Lines Law (ORS 735.400 to 735.495);
- b. Upon request, complete copies of insurance policies, trust agreements, etc. shall be provided to City;
- c. Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance amounts;
- d. Umbrella or Excess Liability Insurance may be used to achieve the above minimum liability limits, so long as policy is endorsed to state it is “As Broad as Primary Policy.” If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess Liability Insurance policy may be required;
- e. Contractor shall provide City not less than 30 days written notice of Contractor’s intent to cancel, terminate or make any material change affecting required insurance coverage;
- f. Until such time as the insurance is no longer required by the City, Contractor shall provide the City with renewal or replacement evidence of insurance no less than 30 days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the City and immediately replace such insurance with an insurer meeting the requirements

- g. Except for Professional Liability Insurance, the insurance shall be provided by a carrier with A.M. Best's Rating of A- or better and Financial Performance Rating of 7 or better. Contractor's Professional Liability Insurance policy shall be written by an insurer satisfactory to City and may be written on a claims made basis, provided Contractor, at Contractor's own expense, maintains the Professional Liability Insurance in full force for not less 24 months following completion of this Contract; and
- h. The insurance provided by Contractor and its subcontractors shall apply on a primary basis and be required to respond and pay prior to any other available coverage. Any insurance maintained by the City shall be excess of and shall not contribute with the insurance provided by Contractor and its subcontractors.

City reserves the right to review the types of coverages and limits of insurance required herein from time to time. In the event that City changes its insurance requirements after this Contract has been signed, City will provide notice to Contractor of the new requirements. Contractor shall promptly modify its coverage to comply with the new requirements and provide City with updated evidence of coverage. Contractor will be entitled to an adjustment in the Contract price for any increase in premium resulting from such changes, provided Contractor can establish with reasonable certainty that the increased premium was due to changes required by City. Premium savings from any changes shall be refunded to City.

19. LIMITATION OF LIABILITIES. Neither party shall be liable in contract, tort, strict liability, warranty or otherwise for (i) any special, indirect, incidental, consequential or non-economic damages resulting from or in any way related to this Contract, such as, but not limited to, delay, disruption, loss of product, cost of capital, loss of anticipated profits or revenue, or loss of use of equipment or system, or (ii) any damages of any sort whatsoever arising solely from the termination of this Contract in accordance with its terms; provided, however, the provision of this paragraph do not apply to liability arising under or relating to Section 8(e)(ii)(Termination) or Section 14 (Representations and Warranties; Standard of Care).

20. NOTICE. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or City at the address or number as identified herein above, or to such other addresses or numbers as either party from time to time may designate in writing. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against City, such facsimile transmission must be confirmed by telephone notice to the Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

21. NO THIRD PARTY BENEFICIARIES. City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

22. CONFLICT OF INTEREST. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.

23. HAZARD COMMUNICATION. Contractor shall notify City before using products containing hazardous chemicals to which City employees or patrons may be exposed. In accordance with the OR-OSHA Hazard Communication Rules in OAR chapter 437, division 155, Contractor shall provide City with a Material Safety

Data Sheet for any goods provided under this Contract that may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use (OAR 437-155-005(2), 437-155-025). In addition, Contractor must label, tag, or mark such goods.

24. DISCLOSURE OF SOCIAL SECURITY NUMBER. Contractor must provide Contractor's Social Security Number (SSN) unless Contractor provides an Employer Identification Number (EIN) or other valid form of Taxpayer Identification Number (TIN). SSN is requested pursuant to BPC 47-0636 of the Beaverton Purchasing Code (Resolution 3917, as amended). SSN provided pursuant to this authority will be used for the administration of state, federal and local tax laws. Contractor's TIN will be reported to the Internal Revenue Service (IRS) under the name and TIN submitted. (See IRS 1099 for more information.) Information not matching IRS records may subject Contractor to backup withholding.

25. SURVIVAL. Expiration shall not extinguish or prejudice City's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured. All representations, indemnifications, warranties and guarantees made in, required by or given by the Contractor in accordance with this Contract, as well as all continuing obligations indicated in the Contract, will survive final payment to the Contractor, completion of the Work and termination or completion of the Contract.

26. TIME IS OF THE ESSENCE. Time is of the essence of this Contract.

27. GOVERNING LAW. This Contract is entered into and is to be performed in Oregon and shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit, or proceeding between City and Contractor arising from or relating to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Washington County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Contractor hereby consents to *in personam* jurisdiction of said courts.

28. CAPTIONS. The captions or headings in this Contract are for are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.

29. COUNTERPARTS. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

30. MERGER. This Contract (including, to the extent provided herein, any attached exhibits) constitutes the entire and integrated agreement between the parties and supersedes all prior contracts, negotiations, representations or agreements, either written or oral. There are no understandings, agreements, representations, oral or written, not specified herein regarding this agreement.

31. WAIVER. City's failure to enforce a provision of this Contract shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of this Contract.

32. SEVERABILITY. If any term or provision, or portions thereof, of this Contract is declared by an arbiter or a court of competent jurisdiction to be illegal, invalid, void, or otherwise unenforceable, each such term or provision shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable; all other provisions and requirements of this Contract shall remain in full force and effect insofar as possible to preserve the lawful anticipated benefits of this Contract to the parties.

Certification

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws; (d) Contractor is an independent Contractor as defined in ORS 670.600; and (e) the Contractor data set forth herein is true and accurate.

The parties, by their signature below, acknowledge having read and understood the Contract and agree to be bound by its terms and conditions.

AGREED TO BY THE PARTIES HERETO:

CITY OF BEAVERTON, OREGON

BY: _____
Mayor

DATE: _____

Approved as to legal sufficiency:

BY: _____

TITLE: _____

DATE: _____

City of Beaverton Business License #: _____