

The City of Columbia City

In Columbia County on the Columbia River



February 21, 2019

CITY OF COLUMBIA CITY

REQUEST FOR PROPOSALS

INSURANCE AGENT OF RECORD

Proposals Due: Friday, March 29, 2019 – 5:00 pm local time

Submit Proposals To: City of Columbia City
Attn: Michael S. McGlothlin, City Administrator
1840 Second Street/PO Box 189
Columbia City, Oregon 97018

Direct Questions To: Michael S. McGlothlin, City Administrator
Phone: (503) 397-4010
Email: mmcglathlin@columbia-city.org

RFP – Insurance Agent of Record
Closes – Friday, March, 29, 2019 – 5:00 pm

**PUBLIC NOTICE
REQUEST FOR PROPOSALS
INSURANCE AGENT OF RECORD**

The City of Columbia City is seeking sealed proposals from qualified firms to provide Insurance Agent of Record services for the City’s liability and workers’ compensation needs and risk management support. Proposals will be received until 5:00 pm local time, Friday, March 29, 2019, at the Columbia City City Hall located at 1840 Second Street, Columbia City, Oregon 97018.

No proposal will be considered unless fully completed in a manner provided in the RFP packet. Facsimile and electronic (email) proposals will not be accepted nor will any proposal be accepted after the stated due date and time. Any proposal received after the closing time will be returned to the submitting firm unopened after a contract has been awarded for the required services.

RFP packets may be downloaded from <http://www.columbia-city.org> or obtained in person at Columbia City City Hall located at 1840 Second Street, Columbia City, Oregon 97018.

Proposers are required to certify non-discrimination in employment practices, and identify “resident bidder” status as defined in ORS 279A.120. Pre-qualification of proposers is not required. All proposers are required to comply with the provisions of Oregon Revised Statutes and Columbia City Policy.

The City may reject any proposal not in compliance with all prescribed public bidding procedures and requirements and may reject for good cause any or all proposals upon a finding of the City if it is in the public interest to do so.

PUBLISHED: The Chronicle
DATE: Wednesday, February 27, 2019

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SECTION 1
INTRODUCTION

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The City may reject any proposal not in compliance with all prescribed public bidding procedures and requirements and may reject for good cause any or all proposals upon a finding of the City if it is in the public interest to do so.

SECTION 2
PROPOSER’S SPECIAL INSTRUCTIONS

A. PROPOSED TIMELINES

Wednesday, February 27, 2018	Advertisement and Release of Proposals
Friday, March 29, 2019 – 5:00 pm	Deadline for Submission of Proposals
Week of April 15th, 2019	Interviews (if necessary)
Friday May 17, 2019	Award of Contract by City of Columbia City
Monday, June 3, 2019	Commencement of Services

NOTE: The City reserves the right to modify this schedule at the City’s discretion

B. GENERAL

By submitting a proposal, the Proposer certifies that the Proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

C. PROPOSAL SUBMITTAL

The Proposal and all amendments must be signed and submitted no later than 5:00 pm, Friday March 29, 2019, to the address below. Each proposal must be submitted in a sealed envelope and designated with proposal title. Proposers must include an original hard copy plus one (1)

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electronic copy on portable USB drive (thumb drive). To assure that your proposal receives priority treatment, please mark the envelope as follows.

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City of Columbia City
Attn: Michael S. McGlothlin, City Administrator
1840 Second Street/PO Box 189
Columbia City, Oregon 97018

Proposer shall put their name and address on the outside of the envelope. It is the Proposer’s responsibility to ensure that proposals are received prior to the stated closing time. The City shall not be responsible for the proper identification and handling of any proposals submitted incorrectly. Late proposals, late modification or late withdrawals shall not be considered accepted after the stated bid opening date and time and shall be returned unopened. Facsimile and electronic (email) proposals will not be accepted.

D. PROTEST OF SCOPE OF WORK OR TERMS

A Proposer who believes any details in the scope of work or terms detailed in the proposal packet and sample contract are unnecessarily restrictive or limit competition may submit a protest in writing following the directions below. Any such protest shall include the reasons for the protest and shall detail any proposed changes to the scope of work or terms.

To be considered, protests must be received at least five (5) days before the proposal closing date. The City shall not consider any protest against award due to the content of proposal scope of work or contract terms submitted after the established protest deadline. All protests should be directed to the attention of Michael S. McGlothlin, City Administrator, and be marked as follows:

RFP Specification/Term Protest

City of Columbia City
Attn: Michael S. McGlothlin, City Administrator
1840 Second Street/PO Box 1840
Columbia City, Oregon 97018

If a protest is received in accordance with section above, the proposal opening date may be extended if necessary to allow consideration of the protest and issuance of any necessary addenda to the proposal documents. The City Administrator shall respond to any protest and, if necessary, shall issue any appropriate revisions, substitutions, or clarification via addenda to all interested Proposers

E. PROPOSAL SUBMISSION AND SIGNING

All requested forms and attachments (Signature Page, Acknowledgment Addendum, Statement

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of Proposal, etc.) must be submitted with the Proposal and in the required format. The submission and signing of a proposal shall indicate the intention of the firm to adhere to the provisions described in this RFP.

F. COST OF PREPARING A PROPOSAL

Submitting a proposal in response to this RFP does not commit the City to paying any costs incurred by Proposer in the submission or presentation of a proposal, or in making the necessary studies for the preparation thereof.

G. INTERPRETATIONS AND ADDENDA

All questions regarding this project proposal shall be directed to Michael S. McGlothlin, City Administrator. If necessary, interpretations or clarifications in response to such questions will be made by issuance of an “Addendum” and an “Acknowledgement of 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 by the Proposer who will submit an “Acknowledgment of Addendum” with the proposal. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

H. FEDERAL TAX ID REQUIRED

Successful Contractor shall complete a W-9 form for the City at the time of contract execution.

I. CITY’S PROJECT MANAGER

The City’s Project Manager for this work will be Michael S. McGlothlin, City Administrator, who can be reached by phone at (503) 397-4010 or by email at mmcglathlin@columbia-city.org

J. PROPOSAL VALIDITY PERIOD

Each proposal shall be irrevocable for a period of ninety (90) days from the Proposal Opening Date.

K. FORM OF CONTRACT

A copy of the City's standard professional services agreement, which the City expects the successful firm or individual to execute, is included as “Attachment C”. The contract will incorporate the terms and conditions from this RFP document and the successful proposer’s response documents. Firms taking exception to any of the contract terms shall submit a protest

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or request for change in accordance with Section 2.D “Protest of Scope of Work or Terms” or their exceptions will be deemed immaterial and waived.

L. TERM OF CONTRACT

The term of the contract shall be a period of five (5) years. The Parties may agree upon up to two (2) additional two- (2) year periods. Any renewal periods shall be done in writing not less than 120 days before the end of any contract period. The total term of the contract cannot exceed nine (9) years.

M. TERMINATION

The contract may be terminated by mutual consent of both parties or by the City at its discretion with 30 days’ written notice.

N. INTERGOVERNMENTAL COOPERATIVE PURCHASING

The bidder submitting this proposal agrees to extend identical prices and services under the same terms and conditions to all public agencies in the region. Quantities and information stated in a proposal in response to this solicitation must reflect and relate to the City of Columbia City usage only.

Each participating agency shall execute its own contract with the lowest responsible/responsive bidder for its requirements. Any bidder(s), by written notification included with their bid, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies.

O. NON-COLLUSION

Proposer must certify that its proposal has been arrived at independently and has been submitted without collusion designed to limit independent bidding or competition.

P. PUBLIC RECORD

All bid material submitted by bidder shall become the property of the City and is public record unless otherwise specified. A bid that contains any information that is considered trade secret under ORS 192.501(2) should be segregated and clearly identified as such. This information will be kept confidential and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS 192. The above restrictions may not include cost or price information, which must be open to the public.

**SECTION 3
BACKGROUND**

The City of Columbia City was founded in 1867 and today is known for its beauty and livability. Columbia City is located in northwestern Oregon on the banks of the Columbia River; approximately 31 miles north of the City of Portland on Highway 30, 2 miles north of the City of

St. Helens and 61 miles east of the Pacific Ocean. The city is dominated, ecologically and visually, by the Columbia River, which is nearly a mile wide here. Fir-clad slopes provide a backdrop west of town. Across the river are the foothills of the Cascade Range. Five snow-covered peaks are visible from the city: Mount St. Helens, Mt. Adams, Mt. Hood, Mt. Rainier and Mt. Jefferson.

SECTION 4
SCOPE AND SCHEDULE OF WORK

A. MINIMUM REQUIREMENTS

The minimum requirements must be met by any agency submitting a proposal:

1. The agent or agency must be licensed according to Oregon law to operate in the State of Oregon.
2. The qualified principal or account person must have a minimum of 10 years active experience in commercial lines, risk management consulting and significant experience servicing government entities in Oregon. A designated second principal with comparable qualifications is also required. The City desires separate claims and risk management services. An account person with at least 5 years active experience in loss control consulting is also required.
3. The agent or agency must have been in business as a firm for a minimum of ten years.
4. The agent or agency must maintain offices in the Columbia County or Portland Metro area, or be available within 2 hours for emergencies.
5. The agency must have an annual minimum volume of \$2,000,000 premium excluding personal lines and life insurance and must have at least two qualified principals or account executives as well as trained office staff.
6. Evidence of minimum insurance, per contract, will be required with the proposal by including a certificate of insurance.

B. SCOPE OF SERVICES (BASE SERVICES)

The Firm selected will be required to perform the services outlined below:

1. Represent city as agent of record for property casualty and workers' compensation coverage. These services are consistent with the CIS definition of agent of record with additional funding and consultative risk management issue services. Since the city has the need for infrequent or rare workers' comp consultation, the fee should reflect reduced support.
2. Assist City, as needed, in evaluation and recommendation in the areas of risk management, safety loss control, review contract insurance requirements and certificates of insurance provided by contractors and other vendors.
3. Assist in the design of a comprehensive insurance program, addressing retention levels, broadest available coverage terms and insured's financial security.
4. Make recommendations for self-insurance and other risk-financing methods as appropriate.
5. Organize renewal underwriting information and prepare insurance specifications.
6. Prepare marketing strategies for review by City prior to approaching markets.
7. Approach insurance marketplace on behalf of City. Analyze insurer proposals with respect to

cost, coverage and stability of insurers. Review proposals received from insurance companies for conformance with specifications and present quotations to City in a spreadsheet format detailing and comparing coverages, forms and pricing. Make recommendation to City's City Administrator for approval. Negotiate final renewal terms.

8. Obtain policies from insurance carriers and forward to City in a timely fashion. Keep City apprised of delays.

9. Review all binders, policies and endorsement to assure coverage is as intended. Verify accuracy of all policies, endorsements and invoices prior to delivery.

10. Maintain a summary listing of all policies and endorsements that identify the type of coverage, insurance company name & policy number, policy period, coverage synopsis and a brief synopsis of significant coverage features, policy limits, deductibles, and premiums.

Update summary pages as revisions occur. Identify potential or actual uninsured or underinsured exposures.

11. Issue Certificates of Insurance and other evidence of insurance as requested or required.

12. Place, cancel and otherwise handle, at the direction of the City and for the benefit of the City all placements, binders, policies and endorsements as requested by the City in a timely fashion which would avoid lapses in coverages.

13. Assist City in submittal of claims to insurance carriers. Interface with carrier upon request when coverage issues arise.

14. Maintain insurable values on buildings at replacement value, include new construction and make statement available to the City.

15. Consult with the City Administrator when called upon throughout the year on any matters pertaining to the operation of the City's insurance and safety programs, or regarding any risk management issue or recommendation.

16. Be available to attend meetings when needed, with reasonable notice. Respond to questions in a timely manner.

17. Prior to renewal of insurance policies, Agent shall analyze losses and loss history trends, with frequency and severity information on losses. Agent shall provide loss forecasts and loss retention analysis when appropriate.

18. Supply City's City Administrator a budget letter for estimated premiums that will be required for the next fiscal year. This requires a projection of new total property values, including any completed construction or contemplated acquisitions. Based on this review and a survey of current market trends, a total premium is projected. This is due no later than January 10th of each year.

19. Prepare an annual report for delivery to the City's City Administrator. This report is to include any pertinent information relative to new or changed coverages, companies, amounts or premiums, term of policies, deductibles, and claims history & trends. New rulings by the Oregon Insurance Division or the Division of Financial Regulation may also be included. This report will also include information about the services provided by Agent and issues the City should address during the next contract year. This report shall be filed no later than January 10th of each year.

20. Provide other such services consistent with devising, adopting, administering or revising

plans of insurance coverage and risk management for the City.

21. Provide access to a learning management system with high quality safety related material and the ability to track employer sponsored training of individual employees.

C. SPECIAL SERVICES

1. Other services that Agent would provide on an hourly fee basis or special services requested by the City that are not part of Section B.

D. AGENT INNOVATIONS, EFFECTIVENESS AND UNIQUE SERVICES

1. Any service innovations Agent is proposing.
2. The effectiveness of the proposed services and how such effectiveness is measured.
3. Any unique services or special expertise your brokerage firm offers that might be of interest to the City.

SECTION 5
PROPOSAL CONTENT AND FORMAT

A. FORMAT

To provide a degree of consistency in review of the written proposals, firms are requested to prepare their proposals in the standard format specified below. Please ensure to limit the number of pages for your response to 15.

1. Title Page

Proposer should identify the RFP Title, name and title of contact person, address, telephone number, fax number, email address and date of submission.

2. Transmittal Letter

The transmittal letter should be not more than two (2) pages long and should include as a minimum the following:

- a. A brief statement of the Proposer's understanding of the project and services to be performed;
- b. A positive commitment to perform the services within the time period specified, starting and completing the project within the deadlines stated in this RFP; and the names of persons authorized to represent the Proposer, their title, address and telephone number (if different from the individual who signs the transmittal letter.)

3. Table of Contents

The table of contents should include a clear and complete identification by section and page number of the materials submitted.

4. Firm and Team Qualifications

- a. Background of the firm. This should include a brief history of the firm and types of services the firm is qualified to perform.
- b. Qualifications of the firm in performing this type of work. This should include examples of related experience and references for similar studies and projects.
- c. Proposers must identify the anticipated members of their firm that will be

assigned to meet the City’s needs. Proposers should identify individuals and subcontractors who will provide the services, their experience, and their individual qualifications. Pertinent resumes of assigned personnel should be included.

5. Service Understanding and Approach

Proposers should provide the City with information regarding their understanding of the City’s needs with regards to the Scope and Schedule of Work. Proposers should demonstrate a general understanding of the needs of a municipality in the State of Oregon from an Insurance Agent of Record and risk management support firm. As part of their service understanding documentation, Proposer’s should address their availability to meet the City’s needs.

6. Fee Structure

The proposed fee structure should include the complete breakout for the Contractor’s costs to provide all of the services under the subsequent contract. The Agent’s compensation is to be a flat annual fee for Base Services outlined in the Scope of Services (Section 4B).The structure of the fee and payment of the fee will be part of the proposal. All insurance policies will be placed net of the commission or fees payable to the Agent by the carrier. The fee proposed will be all inclusive for performance of the services specified, including labor, materials, transportation, etc. For additional services offered outside the Base Services the proposal shall include a clear statement of the services and the cost for those services. If there are expenses that are considered reimbursable and are not included in the compensation structure, such expenses shall be identified in the proposal.

B. 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.

C. ADDITIONAL INFORMATION

Please provide any other information you feel would help the Selection Committee evaluate your firm for this project.

D. REFERENCES

Proposer must demonstrate successful past performance of the firm’s ability to provide services as set forth in this specification. Proposers must detail three (3) references to document experience. References must be detailed in Attachment B “Statement of Proposal”.

E. DISPUTES

Should any doubt or difference of opinion arise between the City and a Proposer as to the items to be furnished hereunder or the interpretation of the provisions of this RFP, the decision of the City shall be final and binding upon all parties.

F. CITY PERSONNEL

No Officer, agent, consultant or employee of the City shall be permitted any interest in the contract.

SECTION 6
PROPOSAL EVALUATION PROCEDURES

A. SELECTION AND EVALUATION PROCESS

A Selection Committee assembled by the City will review the written proposals. Proposals will be evaluated to determine which ones best meet the needs of the City. After meeting the mandatory requirements, the proposals will be evaluated on both their technical and fee aspects. The Selection Committee will select the Proposer which best meets the City's needs based upon its evaluation of a firms proposal. Proposals will be evaluated in accordance with the following:

1. Proposal on time, complete and not more than 15 pages.....Pass/Fail
2. An original hard copy plus one (1) electronic copy on portable USB Drive.....Pass/Fail
3. Transmittal letter.....Pass/Fail
4. Firm and team qualifications.....30 points
Technical experience of the firm and insurance agent of record with specialized experience and competence with Oregon governmental and municipal entities will be evaluated pursuant to Section 4 of this RFP packet.
5. Service understanding and approach.....40 points
Please refer to Section 5 of this RFP packet, and the scope of work requirements.
6. Fee structure.....30 points
7. Evaluation of the proposed fee will consider the overall cost (fees plus out-of-pocket expenses) for base services, special services and agent identified unique services.

TOTAL EVALUATION POINTS 100 POINTS

B. PRESENTATION/INTERVIEW

At the option of the City, the top scoring proposers (based on the points identified in 6.A. above) may be asked to make a presentation of their proposal. This will provide an opportunity to clarify or elaborate on the proposal, but will not, in any way provide an opportunity to change any fee amount originally proposed. The City's Administrator will schedule the time and location of these presentations and notify the selected firms. If the City elects to conduct a presentation/interview process, 25 criteria points will be assigned to the process and will be added to the participating Proposer's total points.

C. INVESTIGATION OF REFERENCES

The City reserves the right to investigate references and the past performance of any Proposer with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, its completion or delivery of a project on schedule and its lawful payment of employees and workers.

D. CLARIFICATION OF PROPOSALS

The City reserves the right to obtain clarification of any point in regards to a proposal or to obtain additional information necessary to properly evaluate or particular proposal. Failure of a Proposer to respond to such a request for additional information or clarification could result in rejection of their proposal.

E. RESERVATION IN EVALUATION

The Selection Committee reserves the right to either: (a) request “Best and Final Offers” from the two finalist firms and award to the lowest priced or (b) to reassess the proposals and award to the vendor determined to best meet the overall needs of the City.

F. INTENT OF AWARD

Upon review of the proposals submitted, the City may negotiate a scope of work and a general services agreement with one firm, or may enter into scope of work and general services agreements with more than one firm to provide the services described in this RFP.

G. PROTEST OF AWARD

Any adversely affected Proposer has seven (7) calendar days from the date of the written notice of award to file a written protest with the City Administrator.

H. PROPOSAL REJECTION

The City reserves the right to:

1. Reject any or all proposals not in compliance with all public procedures and requirements;
2. Reject any proposal not meeting the specifications set forth herein;
3. Waive any or all irregularities in proposals submitted;
4. In the event two or more proposals shall be for the same amount for the same work, the City shall follow the provisions of the Oregon Attorney General’s Model Public Contract Manual;
5. Reject all proposals;
6. Award any or all parts of any proposal; and
7. Request references and other data to determine responsiveness and suitability for the services described in this RFP.

SECTION 7
PROPOSAL CERTIFICATIONS

Non-discrimination Clause

The Proposer agrees not to discriminate against any client, employee or applicant for employment or for services, because of race, color, religion, sex, national origin, handicap or age with regard to, but not limited to, the following: employment promotion, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; selection for training; rendition of services. It is further understood that any contractor who is in violation of this clause shall be barred from receiving awards of any purchase order from the City, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such acts is unlikely.

Agreed by: _____
(Please sign and print name)

Firm Name: _____

Contact Information: _____

Resident Bidder Certificate

Please Check One:

Resident Bidder: Bidder has paid unemployment taxes or income taxes in Oregon during the last twelve calendar months immediately preceding the submission of this proposal and has a business address in Oregon.

Or

Non-resident Bidder: Bidder does not qualify as a “Resident Bidder” under the definition stated above.

(Please specify your state of residence: _____)

Proposer’s signature:

Type or print Proposer’s name:

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SECTION 8
SIGNATURE PAGE

The undersigned proposes to perform all work as listed in the Specification section, and anything submitted by the Proposer for “additional Services”, for the price(s) stated; and that all articles supplied under any resultant contract will conform to the specifications in that contract and in this RFP.

The undersigned agrees to be bound by all applicable laws and regulations, the accompanying specifications and by City policies and regulations.

The undersigned, by submitting a proposal, represents that:

- A) The Proposer has read and understands the specifications.
- B) Failure to comply with the specifications or any terms of the Request for Proposal may disqualify the Proposer as being non-responsive.

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 in this RFP as identified below in Attachment A (if any) have been received and duly considered and that all costs associated with all addenda have been included in this proposal:

(THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK)

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SECTION 8
SIGNATURE PAGE, continued

The undersigned therefore offers and makes this proposal to furnish services at the price(s) indicated herein in fulfillment of the requirements identified in the RFP and specifications of the City.

Name of firm: _____

Address: _____

Telephone Number: _____ Fax Number: _____

Social media or other website addresses: _____

By: _____ Date: _____
(Signature of Authorized Official. If partnership, signature of one partner.)

Typed Name/Title: _____

If corporation, attest: _____
(Corporate Officer)

Corporation Partnership Individual

Federal Tax Identification Number (TIN): _____

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**ATTACHMENT A
CITY OF COLUMBIA CITY, OREGON
ACKNOWLEDGMENT OF ADDENDA**

Project Title: Insurance Agent of Record

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I/WE HAVE RECEIVED THE FOLLOWING ADDENDA (If none received, write “None Received”):

1. _____ 3. _____
2. _____ 4. _____

Date: _____

Signature of Proposer

Title

Corporate Name

**ATTACHMENT C
CITY OF COLUMBIA CITY, OREGON
PROFESSIONAL SERVICES AGREEMENT
INSURANCE AGENT OF RECORD**

THIS AGREEMENT, made and entered into this (Day) day of (Month), (Year), by and between the City of Columbia City, a municipal corporation, hereinafter referred to as the "City," and (Name and Address of Firm), hereinafter referred to as "Agent."

RECITALS

WHEREAS, the City's Fiscal Year 2019-2020 budget provides for insurance agent of record services; and

WHEREAS, the accomplishment of the work and services described in this Agreement is necessary and essential to the program of the City; and

WHEREAS, the City desires to engage the Agent to render professional insurance agent of record, risk management, safety, and loss control services for the project described in this Agreement, and the Agent is willing and qualified to perform such services;

THEREFORE, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

1. Agent's Scope of Services

The Agent shall perform professional insurance agent of record, risk management, safety, and loss control services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit A, which is attached hereto and by this reference made a part of this Agreement.

2. Effective Date and Duration

This agreement shall become effective upon the date of execution by the City's Local Contract Review Board, and shall expire, unless otherwise terminated or extended, on completion of the work or June 30, 2024 whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. Agent's Fee

A. Basic Fee

1) As compensation for Basic Services as described in Exhibit A of this Agreement, and for services required in the fulfillment of Paragraph 1, the Agent shall be paid annually, based on the Agent's invoice for base services as outlined in the "Schedule of Rates" in Exhibit B of this agreement, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall not exceed the

amount of (Amount of dollars expressed in words) dollars (\$Amount of dollars expressed numerically) without prior written authorization.

2) The Parties agree that the Basic Fee is based upon the Scope of Services to be provided by the Agent. In the event that the actual professional and technical services cost differs from the estimated professional and technical services cost, the Agent's compensation will not be adjusted unless the Scope of Services to be provided by the Agent changes and is authorized in writing and accepted by the City.

B. Payment Schedule for Basic Fee

Payment will be made based on the Agent's invoice for base services, subject to the approval of the City Administrator, or designee. Billings shall be submitted by the Agent periodically, but not more frequently than monthly. Payment by the City shall release the City from any further obligation for payment to the Agent for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

C. Payment for Special Services

Only when directed in writing by the City, the Agent shall furnish or acquire for the City the professional and technical services based on the schedule as described in Exhibit B of this contract for additional services.

D. Certified Cost Records

The Agent shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the Agent shall be subject to audit by the City. The Agent shall complete work and cost records for all billings on such forms and in such manner as will be satisfactory to the City.

E. Contract Identification

The Agent shall furnish to the City its employer identification number, as designated by the Internal Revenue Service, or social security number, as the City deems applicable.

F. Payment – General

1) Agent shall pay to the Department of Revenue all sums legally required to be withheld from its employees' paychecks for work pursuant to this Agreement, pursuant to Oregon and federal law.

2) Agent shall pay its employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week, for work performed pursuant to this Agreement, except for any employees working in an "exempt" position under Oregon or federal law, or for those independent contractors retained by Agent to perform services under this Agreement.

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

4) The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

5) Agent shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Agent shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.

4. Ownership of Plans and Documents: Records

City shall be the owner of and shall be entitled to possession of any and all work products of Agent which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Agent prior to termination of this Agreement by Agent or upon completion of the work pursuant to this Agreement.

5. Assignment/Delegation

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Agent shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. Agent is Independent Contractor

A. The City's Administrator, or designee, shall be responsible for determining whether Agent's work product is satisfactory and consistent with this agreement, but Agent is not subject to the direction and control of the City. Agent shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.

B. Agent is an independent contractor and not an employee of City. Agent acknowledges Agent's status as an independent contractor and acknowledges that Agent is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Agent to provide services under this contract are employees of Agent and not of City. Agent acknowledges that it is not entitled to benefits of any kind to which a City employee

is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Agent is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Agent under the terms of the agreement, to the full extent of any benefits or other remuneration Agent receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Agent or to a third party) as a result of said finding.

C. The undersigned Agent hereby represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Agent, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing. Agent further represents that to the best of its/his/her knowledge, no family member of any City employee or elected official will receive financial benefit as a result of this agreement with City.

D. Agent acknowledges and agrees that it/he/she and its/his/her employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System. Agent and its/his/her employees and contractors are not eligible for any retirement benefits from the City.

E. Agent shall obtain, prior to the execution of any performance under this Agreement, a City of Columbia City Business License. The City of Columbia City Business License is based on a calendar year with a December 31st expiration date. New businesses operating in Columbia after July 1st of the current year will pay a pro-rated fee through the end of the calendar year.

F. Agent is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. Indemnity

A. The City has relied upon the professional ability and training of the Agent as a material inducement to enter into this Agreement. Agent represents to the City that the work under this contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the Agent's profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of an Agent's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Agent of any responsibility for design deficiencies, errors or omissions.

B. Claims for other than Professional Liability. Agent agrees and shall indemnify, defend, save and hold harmless the City of Columbia City, its officers, employees, agents, and representatives from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, of whatsoever nature, including intentional acts resulting from or arising out of the activities of Agent or its subcontractors, sub-Agents, agents or employees in performance of this contract at both trial and appeal level, whether or not a trial or appeal ever takes place including any hearing before federal or state administrative agencies. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

C. Claims for Professional Liability. Agent agrees and shall indemnify, defend, save and hold harmless the City of Columbia City, its officers, employees, agents, and representatives from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, arising out of the professional negligent acts, errors or omissions of Agent or its subcontractors, sub-Agents, agents or employees in performance of professional services under this agreement. Any work by Agent that results in a design of a facility that is not readily accessible to and usable by individuals with disabilities shall be considered a professionally negligent act, error or omission.

D. As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly or indirectly, in whole or in part, from the quality of the professional services provided by Agent, regardless of the type of claim made against the City in performance of this contract. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Agent unrelated to the quality of professional services provided by Agent in performance of this contract.

8. Insurance

Agent and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover risks arising directly or indirectly out of Agent's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of insurance maintained by the Agent and its subcontractors shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Agent shall obtain, at Agent’s expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an “occurrence” form (CG 2010 1185 or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Fire Damage (Any one fire)	\$50,000

B. Professional Liability

Agent shall obtain, at Agent’s expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by any actual or alleged negligent act, error or omission in the rendering of or failure to render Professional Services. Combined single limit per claim shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$3,000,000 and filed on a “claims-made” form.

C. Commercial Automobile Insurance

Agent shall also obtain, at Agent’s expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage on an “occurrence” form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

If Contractor operates a personally-owned vehicle for business use under this contract, the Contractor shall obtain, at Contractor’s expense, and keep in effect during the term of the contract, business automobile liability coverage for all owned vehicles on an “occurrence” form. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

D. Workers’ Compensation Insurance

The Agent, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers’ Compensation Law and shall comply with ORS 656.017, which requires them to provide workers’ compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers’ compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Agents who perform work without the assistance or labor of any

employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than \$1,000,000 each accident.

E. Additional Insured Provision

All policies aforementioned, other than Workers’ Compensation and Professional Liability, shall include the City its officers, employees, agents and representatives as additional insureds with respect to this contract.

F. Extended Reporting Coverage

If any of the aforementioned liability insurance is arranged on a “claims-made” basis, Extended Reporting coverage will be required at the completion of this contract to a duration of 24 months or the maximum time period the Agent’s insurer will provide such if less than 24 months. Agent will be responsible for furnishing certification of Extended Reporting coverage as described or continuous “claims-made” liability coverage for 24 months following contract completion. Continuous “claims made” coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this contract.

G. Insurance Carrier Rating

Coverage provided by the Agent must be underwritten by an insurance company deemed acceptable by the City. All policies of insurance must be written by companies having an A.M. Best rating of "A-VII" or better, or equivalent. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

H. Self-Insurance

The City understands that some Contractors may self-insure for business risks and the City will consider whether such self-insurance is acceptable if it meets the minimum insurance requirements for the type of coverage required. If the Contractor is self-insured for commercial general liability or automobile liability insurance the Contractor must provide evidence of such self-insurance. The Contractor must provide a Certificate of Insurance showing evidence of the coverage amounts on a form acceptable to the City. The City reserves the right in its sole discretion to determine whether self-insurance is adequate.

I. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Agent shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required Certificates of Insurance have been received and approved by the City. The certificate will specify and document all provisions within this contract and include a copy of Additional Insured Endorsement. A renewal certificate will be sent to the address below prior to coverage expiration.

J. Independent Contractor Status

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

K. Primary Coverage Clarification

The parties agree that Agent's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

L. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability and commercial automobile policies required by this contract.

A certificate in form satisfactory to the City certifying to the issuance of such insurance will be forwarded to:

City of Columbia City
Attn: City Administrator
1840 Second Street/PO Box 189
Columbia City, Oregon 97018

At the discretion of the City, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company may be required to be forwarded to the above address. Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit Agent's liability hereunder. Notwithstanding said insurance, Agent shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. Termination Without Cause

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Agent. If City terminates the contract pursuant to this paragraph, it shall pay Agent for services rendered to the date of termination.

10. Termination With Cause

A. City may terminate this Agreement effective upon delivery of written notice to Agent, or at such later date as may be established by City, under any of the following

conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2) If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3) If any license or certificate required by law or regulation to be held by Agent, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Agent becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Agent, if a receiver or trustee is appointed for Agent, or if there is an assignment for the benefit of creditors of Agent.

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

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

- 1) If Agent fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Agent fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.
- 3) If Agent fails to eliminate a conflict as described in Section 14 of this agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Agent shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Agent shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Agent bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Agent. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary

attorney fees, and other costs of litigation at trial and upon appeal.

11. Non-Waiver

The failure of City to insist upon or enforce strict performance by Agent of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

CITY OF COLUMBIA CITY
Attn: City Administrator Michael S. McGlothlin
Address: 1840 Second Street/PO Box 189
Columbia City, Oregon 97018
Phone: (503) 397-4010
Fax: (503) 366-2870
Email: mmcglathlin@columbia-city.org

(AGENT)
Attn: (Agent's contact person's name)
Address: (Agent's mailing address)
Phone: (Project Mgr's phone #)
Fax: (Project Mgr's fax #)
Email: (Contact person's email)

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

13. Merger

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

14. Professional Services

The City requires that services provided pursuant to this agreement shall be provided to the City by an Agent, which does not represent clients on matters contrary to City interests. Further, Agent shall not engage services of an Agent and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests.

Should the Agent represent clients on matters contrary to City interests or engage the services of an Agent and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests, Agent shall consult with the appropriate City representative regarding the conflict.

After such consultation, the Agent shall have seven (7) days to eliminate the conflict to the satisfaction of the City. If such conflict is not eliminated within the specified time period, the agreement may be terminated pursuant to Section 10 (B - 3) of this agreement.

15. Force Majeure

Neither City nor Agent shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

16. Errors

Agent shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

17. Extra (Changes) Work

Only the City's Administrator may authorize extra (and/or change) work. Failure of Agent to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Agent thereafter shall be entitled to no compensation whatsoever for the performance of such work.

18. Choice of Law, Venue

The provisions of this Agreement are governed by Oregon Law. Venue will be the State of Oregon, Circuit Court in Columbia County, or the US District Court for Oregon, Portland.

19. Compliance With Applicable Law

Agent shall comply with all federal, state, and local laws and ordinances applicable to

the work under this Agreement, including those set forth in ORS 279A, 279B, and 279C.

20. Conflict Between Terms

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

21. Access to Records

City shall have access to such books, documents, papers and records of Agent as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

22. Audit

Agent shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Agent agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

23. Severability

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

24. Representations and Warranties

Agent represents and warrants to the City that:

A. Agent has the power and authority to enter into and perform this Agreement.

B. This Agreement, when executed and delivered, is a valid and binding obligation of Agent, enforceable in accordance with its terms.

C. Agent (to the best of Agent's knowledge, after due inquiry), for a period of no fewer than six calendar years (or since the firm's inception if less than that) preceding the effective date of this Agreement, faithfully has complied with:

1) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

2) Any tax provisions imposed by a political subdivision of this state that applied to Agent, to Agent's property, operations, receipts, or income, or to Agent's

performance of or compensation for any work performed by Agent;

3) Any tax provisions imposed by a political subdivision of this state that applied to Agent, or to goods, services, or property, whether tangible or intangible, provided by Agent; and

4) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

D. Any intellectual property rights or such delivered to the City under this Agreement, and Agent's services rendered in the performance of Agent's obligations under this Agreement, shall be provided to the City free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

25. Compliance with Tax Laws

A. Agent must, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of the State of Oregon. For the purposes of this Section, "tax laws" includes all the provisions described in subsection 25.C. 1) through 4) of this Agreement.

B. Any violation of subsection A of this section shall constitute a material breach of this Agreement. Further, any violation of Agent's warranty, in subsection 25.C of this Agreement, that the Agent has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle the City to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

1) Termination of this Agreement, in whole or in part;

2) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Agent, in an amount equal to State's setoff right, without penalty; and

3) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The City shall be entitled to recover any and all damages suffered as the result of Agent's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing a replacement Agent.

These remedies are cumulative to the extent the remedies are not inconsistent, and the City may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

26. Complete Agreement

This Agreement, including the exhibits, is intended both as a final expression of the Agreement between the Parties and as a complete and exclusive statement of the

terms. In the event of an inconsistency between a provision in the main body of the Agreement and a provision in the Exhibits, the provision in the main body of the Agreement shall control. In the event of an inconsistency between Exhibit A and Exhibit B, Exhibit A shall control.

No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Agent, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Agent has executed this Agreement on the date hereinabove first written. Awarded by Columbia City’s Local Contract Review Board at their _____ meeting.

CITY OF COLUMBIA CITY

AGENT

By: Michael S. McGlothlin
City Administrator

By: Authorized Contractor Representative

Date

Date