



**Bend Park & Recreation**  
DISTRICT

799 SW Columbia Street Bend, OR 97702

## **REQUEST FOR PROPOSALS (RFP)**

for

Bend Park and Recreation District  
System Development Charge Methodology Update

Project No. 133

Date of Issuance: July 9, 2018

Proposals Due at 2:00 pm on August 9, 2018 at  
799 SW COLUMBIA STREET, BEND, OR 97702

### **PROJECT MANAGER**

Michelle Healy

541-706-6113

michelleh@bendparksandrec.org

### **CONTRACT ADMINISTRATOR**

David Crowther

541-706-6102

dave@bendparksandrec.org

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## **Section 1. Introduction**

### **1.1. Overview and Background**

Bend Park and Recreation District (District) is seeking professional services to update its System Development Charge (SDC) Methodology. Proposals shall be based on the Scope of Work described in Section 3.

Bend Park and Recreation District is a special district located in Bend, Oregon, with its own taxing authority and publicly elected five-member Board of Directors. The District is not part of the City of Bend or Deschutes County. The District was established under Oregon Revised Statute 266 in 1974 to provide recreation programs, facilities, and park resources for District residents. The District encompasses 42 square miles, which is slightly larger than Bend city limits, with an estimated 2017 population of approximately 88,138.

The District employs 121 full time and 425 part time staff and maintains 81 parks and 70 miles of trails, totaling 3,035 acres of parkland. The District also owns and operates a 62,000 square-foot fitness center, a nationally accredited senior center, a 40,000 square-foot ice and sports facility, and a whitewater park. The District produces and manages a diverse array of more than 1,000 recreation programs.

The District is one of only 166 park and recreation agencies in the U.S. to be accredited by the Commission for Accreditation of Park and Recreation Agencies (CAPRA). The District is also a two-time National Recreation and Park Association Gold Medal Award winning agency.

The District is scheduled to adopt its new Comprehensive Plan in July, 2018. The new plan calls for maintaining the existing level of service for residents by developing 170 acres of park land and 46 miles of trails by 2028. The final draft of the 2018 plan can be viewed at:

[https://www.dropbox.com/s/6lcz8rd72x96uaf/BPRD\\_FinalPlan%20DRAFT\\_web.pdf?dl=1](https://www.dropbox.com/s/6lcz8rd72x96uaf/BPRD_FinalPlan%20DRAFT_web.pdf?dl=1)

Upon completion, the SDC Methodology will be adopted by the District's Board of Directors. To facilitate the eventual adoption, staff, with assistance from the consultants, will provide the Board regular updates throughout the duration of the project.

## **Section 2. Project Understanding**

Bend Park and Recreation District last updated its SDC Methodology in 2009. The District is now seeking a full update of its SDC Methodology to reflect the District's new Comprehensive Plan. Existing documents related to the District's SDC program can be viewed at:

[https://www.dropbox.com/sh/gblcgnu0nxh7a6m/AADgFpvMi-6n4rjZG\\_2YaNXFa?dl=0](https://www.dropbox.com/sh/gblcgnu0nxh7a6m/AADgFpvMi-6n4rjZG_2YaNXFa?dl=0)

In addition to having the consultant review and prepare a new SDC Methodology, the District desires a comprehensive evaluation of SDC strategies, including the feasibility of adding a non-

residential SDC. The District also seeks input on the relationship of SDC rates on housing affordability, and would like to explore how a new methodology could address requests for exemptions, waivers or discounts of SDCs for affordable housing projects.

## **2.1. Project Term**

The District's goal is to start the project in October 2018 and complete it by June 2019. Project start and completion dates will be subject to negotiations with the selected consultant team and are dependent upon the final agreed-to scope of work, contract award and issuance of notice to proceed.

## **2.2. Budget**

The final budget for this work will be based upon negotiations with the selected consultant team.

## **2.3. Schedule**

<b>Event</b>	<b>Due Date</b>
RFP Release	<b>July 9, 2018</b>
Written Questions Due By	<b>July 23, 2018</b>
Answers to Questions Issued By	<b>July 30, 2018</b>
RFP Closing	<b>August 9, 2018</b>
Opening of Proposals	<b>August 9, 2018</b>
Review of RFPs	<b>August 9 – August 22, 2018</b>
Interviews (if necessary)	<b>August 30 – 31, 2018</b>
Notice of Intent to Award	<b>September 4, 2018</b>
Award Protests	<b>September 4 – September 11, 2018</b>
Negotiations	<b>September 12 – September 20, 2018</b>
Notice of Award	<b>September 21, 2018</b>
Notice to Proceed	<b>October 3, 2018</b>

## **2.4. Definitions**

For general definitions see OAR 137-048-0110, which are incorporated by reference herein.

- **“District”** shall mean Bend Park and Recreation District, (BPRD).
- **“RFP”** shall mean this Request for Proposal.
- **“Scope of Work”** shall mean the general character of the supplies and services, the work's purpose and objectives, and the District's expectations. Examples of expectations include, if applicable, a description of the proposed purchase, specifications, tasks (obligations), deliverables, delivery or performance schedule,

and acceptance requirements. The Scope of Work helps the prospective Proposers develop their Proposals.

- **“Statement of Work”** shall mean the specific provision in the final Contract which sets forth and defines in detail the agreed-upon objectives, expectations, performance standards, and other obligations.

## **2.5. Solicitation Process**

### **2.5.1. Procurement Authority and Method**

The District is issuing the RFP pursuant to its authority under Bend Park and Recreation District Resolution 386 and the District will follow our solicitation process for Personal Services as authorized in Resolution 386.

Proposers responding to the RFP do so solely at their own expense. The District is not responsible for any Proposer costs or expenses associated with the RFP.

### **2.5.2. Reservation of District Rights**

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

- Amend, delay or cancel the RFP without liability if District finds it is in the best interest of the District or the public to do so;
- Reject any or all Proposals received upon finding that it is in the best interest of the District or the public to do so;
- Negotiate a Contract based on the Scope of Work described in Section 4 and to negotiate separately in any manner necessary to serve the best interest of the public pursuant to OAR 137-048-0200 (2)(a)(b)(c)
- Amend any Contracts that are a result of the RFP;
- Engage consultants to perform the same or similar services; and
- To extend any Contracts that result from the RFP without an additional RFP process for up to five (5) years, for the circumstances described in OAR 137-048-0310.

The intent of the RFP is to identify a Proposal from a Proposer with the 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 District reserves the sole right to determine the best Proposal for the District's needs.

## **2.6. Submission of Proposals**

Proposals shall be received by the Business Manager listed on the cover sheet no later than the date and time specified, at the address listed on the cover sheet. Proposals may be delivered via U.S. Mail, courier or hand-delivery only. Mailed proposals shall be sent to the attention of the Business Manager. Late, faxed, or emailed proposals shall not be accepted.

## 2.7. Addenda

Changes to the Proposal Documents, whether in response to requests for clarification, or change, or a solicitation protest, or to issue supplemental instructions, may only be made by written addenda. The District will post any notice of any addenda to the District's web site (<https://www.bendparksandrec.org/about/bids/>) and it is the responsibility of proposers to check the web site. All addenda so issued shall become part of the Proposal Documents. No other oral or written statements to proposers shall be binding on the District unless reduced to written addendum.

## 2.8. Technical Requirements

Proposals shall include, at a minimum:

- A description of the Proposer's approach and process anticipated to complete the scope of work described in Section 3
- A list of the Proposers key personnel and the percentage of time they will be dedicated to this project
- A list of sub-consultants, (if used), including key personnel
- A schedule of values showing pricing per the scope of work including a total cost of work and a current hourly rate sheet, delivered in a separate sealed envelope
- A detailed schedule showing key milestones and deliverables

## 2.9. Evaluation and Award

The District shall evaluate all proposals received in response to the RFP on the following elements:

Scoring Criteria	Maximum Point Value
<b>Proposals</b>	
1. Project team's capability (prime and subconsultants, if any)	20
2. Project process and approach	40
3. Project team's experience and references	30
4. Project team's proposed budget	<u>10</u>
<b>Total Points Possible</b>	<b>100</b>

At its discretion, the District may invite up to the top three (3) firms to participate in an interview. The interview will be scored and become part of the selection process.

Negotiation of contract shall be per OAR 137-048-0210.

## 2.10. Copies

Written proposals shall not exceed **fourteen (14)** 8.5 x 11 inch pages; if double sided copies are provided this means **seven (7)** sheets of double sided content, (excluding the cover), bound and font size no smaller than 11 point. The budget and a schedule of values delivered in a separate sealed envelope are not counted towards the 14 pages.

**Six (6)** printed copies and one digital copy in PDF format shall be submitted. The electronic copy of the proposal shall be provided on a thumb/flash drive. All PDF files shall use compressed graphics for ease of distribution via email.

Use of recyclable materials is encouraged as part of the District's sustainable business practices. The District encourages the use of submittal materials (i.e. paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. The District discourages the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings, and plastic or glossy covers or dividers. Firms are encouraged to print/copy on both sides of a single sheet of paper wherever applicable (if sheets are printed on both sides, it is considered to be two pages).

### **Section 3. Proposed Scope of Work**

The scope of work described below is intended to provide proposers with a general understanding of the District's expectations for the SDC Methodology Update. Proposers should suggest changes and additional details to this scope based upon their professional experiences.

#### **1. Data review:**

- a. 2009 SDC Methodology, Ordinance and associated resolutions
- b. 2018 BPRD Comprehensive Plan – needs, level of service, and prioritized projects
- c. 2019-2023 Capital Improvement Plan
- d. Recent BPRD development, acquisition and collection costs

#### **2. Project Kick off with BPRD staff:**

- a. Review scope of work and project schedule
- b. Discuss any policy issues for consideration in methodology (e.g., affordable housing, indoor recreation, similar rates, and deferrals and/or loans/financing agreements in coordination with the City of Bend)
- c. Clarify roles and responsibilities of BPRD and consultant
- d. Identify any consultant data needs
- e. Review and discuss any other issues or concerns related to SDC methodology

#### **3. Develop outreach plan and support outreach effort:**

- a. Establish goals and desired outcomes of engagement
- b. Identify participants
- c. Formulate process
- d. Prepare meeting materials and provide staff support for designated outreach efforts (District staff will be responsible to schedule and set up meetings)
- e. For the purpose of the fee proposal included in this RFP evaluation, assume the following as a minimum:
  - i. Presentation at two District Board meetings
  - ii. Three working meetings with staff (includes project kick off)
  - iii. Two meetings with the community stakeholders

- iv. Include preparation of meeting materials – handouts, any visual aids and presentations
- v. As part of the fee proposal, please provide District an hourly rate for additional meeting/outreach support

**4. Analyze District needs and present methodology approaches.**

Any proposed approach should consider feasibility and/or impacts of:

- a. Inclusion of indoor and all outdoor acquisition and development costs in determining SDC rates (Note: District's prior methodology excluded all costs for indoor facilities, and land acquisition costs for community parks and trails as part of cost basis for determining current SDC rates)
- b. Creating a non-residential SDC
- c. Excluding, waiving, or discounting SDCs on affordable housing projects
- d. Establishing an SDC financing, deferral or loan program in coordination with City of Bend procedures
- e. Refining fee schedule for the application of SDC on different development classifications such as dormitories; assisted living and memory care facilities; condos and townhomes; accessory dwelling units and "tiny homes"; motels, hotels and other facilities designated for visitors/tourists; non-residential development; single vs multiple tax lots; and consideration of providing a resource for future fee application to unique housing types; etc. (Note: The District passed numerous resolutions after 2009 clarifying application of SDC rates on different residential housing classifications and would like to proactively address these as part of the new methodology)
- f. Establishing new SDC rates consistent with current rates in recognition of balancing community needs with local affordability concerns

**5. Prepare draft and final methodology report:**

- a. Assure adequate time for District staff and Board of Director's review
- b. Finalize report based on input from staff and Board of Directors

**6. Program Administration:**

- a. Review and provide recommendation on existing program administration including expenditure tracking, overall program compliance, staff cost allocations, and annual inflationary index

**7. Review Ordinance and Resolution (s):**

- a. Review and provide input on new Ordinance and Resolution(s) to assure it reflects new methodology (Note: The final Ordinance and Resolution(s) will be prepared by staff and District legal counsel with input from the consultant.)

**Section 4. Attachments**

Attachment A – Sample Contract



## Section 5. Signature

Organization Name:

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Primary Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Address:

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City, State, Zip:

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Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail Address:

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Name and title of the person(s) authorized to represent the Proposer and sign any contracts that may result:

Name: \_\_\_\_\_ Title: \_\_\_\_\_



## ATTACHMENT "A"

Don Horton, Executive Director  
799 SW Columbia Street  
Bend, OR 97702  
tel: 541.706.6100 fax: 541.388.5429  
[www.bendparksandrec.org](http://www.bendparksandrec.org)

### Bend Park and Recreation District

### AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made as of **<Insert Effective Date>**

Between the District:

Bend Park and Recreation District  
799 SW Columbia Street  
Bend, Oregon 97702

And the Consultant:

**<Insert Name>**  
**<Insert Address>**  
**<Insert City state and zip code>**  
**<Insert phone number>**

For the following Project:

System Development Charge Methodology Update

The District and the Consultant agree as follows:

#### ARTICLE 1 Project Parameters

**1.1** This Agreement is based upon the following initial information and assumptions.

- .1** Project: Update SDC Methodology
- .2** Site: 799 SW Columbia Street, Bend, Oregon.
- .3** Schedule: **<Insert the date the Consultant should be completed by>**
- .4** Fee: **<Insert Consultants total fee for contract>**
- .5** Project Number: **<Insert Project Number>**

**1.2** Scope of Services. Consultant will provide all services related to completion of the Project as more particularly described below and in Exhibit A.

**1.3** Consultant's Compensation. District will pay Consultant as provided in Exhibit B.

#### ARTICLE 2 Relationship of the Parties

**2.1** Consultant will provide the Services for the Project in accordance with the terms and conditions of this Agreement. Consultant's performance of Services will be as a professional consultant to District to carry out the Project and to provide the technical documents and supervision to achieve District's Project objectives.

**2.2** In administering this Agreement, District may retain the services of an independent project manager and other consultants as needed to fulfill District's objectives.

**2.3** Consultant will provide a list of all sub-consultants which Consultant intends to utilize on the Project (the "Sub-consultants"). This list will include such information on the qualifications of the Sub-consultants as may be requested by District. District reserves the right to review the Sub-consultants proposed. Consultant will not retain a Sub-consultant to which District has a reasonable objection.

**2.4** This Agreement was awarded on the basis of the unique background and abilities of the key personnel of Consultant and Sub-consultants identified by Consultant (collectively, the "Key Staff" and individually, the "Key Staff Person") in its proposal. Consultant will make available the Key Personnel identified in its proposal for the Project. If requested, Consultant will provide to District a list of the proposed Key Personnel to be assigned to the Project. The list will include information on the professional background of each Key Person. If any Key Person becomes unavailable to Consultant, the Parties will mutually agree upon an appropriate replacement. Without prior notice to, and the written consent of District, Consultant will not: (i) re-assign or transfer any Key Person to other duties or positions so that the Key Person is unable to fully perform his or her responsibilities under the Agreement; (ii) allow any Key Person to delegate to anyone his or her performance of any management authority or other responsibility required under the Agreement; or (iii) substitute any Key Person. District's consent will not be unreasonably withheld. Consultant will remove any individual or Sub-consultant from the Project to which District has a reasonable objection and Consultant will have a reasonable time period within which to find a suitable replacement.

**2.5** Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of Consultant, additional Services will entitle Consultant to additional compensation on condition that the Consultant first have received written authorization from District describing the scope of additional Services and the amount of additional compensation to be paid for the additional Services. In any case in which Consultant performs additional Services without first receiving written authorization from the District and without an express agreement on the total compensation to be paid for the additional Services or the method from which the total amount of compensation is to be determined, Consultant will not be entitled to compensation for such services.

### **ARTICLE 3 Consultant's Responsibilities**

**3.1** The Consultant will provide all professional services customarily furnished and reasonably necessary within the Scope of Services set out at Exhibit A, attached. Time is of the essence for this Agreement. The District and the Consultant will develop a project schedule consistent with requirements of the Scope of Services and the Consultant will complete each phase of the services in accordance with the Schedule.. The Consultant will contract directly with and will pay such Subconsultants.

**3.2** The Consultant will pay all royalties and license fees which may be due by reason of materials or methods employed by the Consultant or its subconsultants or by reason of the necessary inclusion of protected materials or methods in the Project except to the extent such materials or methods are included with the informed consent or at the direction of the District. The Consultant will defend all suits or claims for infringement of patent, trademark, or copyright for which the Consultant is responsible pursuant to this paragraph, which may be brought against the District, and the Consultant will be liable to the District for all losses arising therefrom, including costs, expenses, and attorney fees.

**3.3** The Consultant will not be relieved of responsibility for errors or omissions or other defects in any other documents prepared by the Consultant for the District's review and approval.

**3.4** The Consultant will keep any real property involved in the project free from all liens by reason of its services and will defend, indemnify and hold harmless the District from the operation and effect of any such lien or encumbrance that may be claimed by any person by reason of the Consultant's services. If the Consultant fails to remove any lien or adjust any other claim relating to the Consultant's services, by bonding or otherwise, the District may, without recourse by the Consultant, pay the lien or claim and charge such payments, with costs incurred, to the Consultant.

**3.5** All services provided by the Consultant will be performed in a prompt manner and will be in accordance with the professional standards of care and diligence applicable to such services performed by recognized Consultants in the locale and on the type of project contemplated at the time such services are performed. The Consultant will be responsible for all services provided whether such services are provided directly by the Consultant or by subconsultants engaged by the Consultant. The Consultant will make all decisions called for promptly and without unreasonable delay.

**3.6** Consultant's Insurance. Consultant will procure and maintain for the duration of this Agreement, or such longer time as may be provided, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of services by Consultant, its agents, representatives, employees and subconsultants as set forth below, except to the extent different coverage or limits requirements are specifically set out in the Agreement. The insurance companies will be first-class insurers and underwriters with an A.M. Best's financial strength rating of A- or better and financial size category of X or better, and the insurance companies otherwise will be reasonably acceptable to the District and will provide the District with thirty (30) days' notice of material change, expiration, or cancellation. The Consultant's insurance will be primary and any insurance carried by the District will be excess and noncontributing. The Consultant will furnish the District with Certificates of Insurance evidencing coverage and provisions as required.

.1 Workers' Compensation Insurance: statutory limits.

.2 Employer's Liability Insurance: subject to a waiver of subrogation in favor of the District, with limits of liability of not less than \$1,000,000 per accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit.

.3 Commercial General Liability Insurance: applicable to all premises and operations, including Bodily Injury, Property Damage, Personal Injury, Blanket Contractual Liability, with limits of liability of not less than \$2,000,000 per occurrence, \$4,000,000 aggregate. The general liability coverage will name the District as additional insureds and will contain a severability of interest clause.

.4 Business Automobile Liability Insurance: applicable to any automobile assigned to or used in the performance of the services, whether owned, hired or non-owned, with a limit of liability of not less than \$1,000,000 combined single limit per accident.

.5 Professional Liability Insurance: with per-claim and aggregate limits of at least \$2,000,000 and a retroactive date no later than the effective date of this Agreement. Consultant will maintain such insurance for a period of three (3) years after completion of the Project construction. Consultant will require each sub-consultant engaged or employed by Consultant to be similarly insured with reasonably prudent limits and coverages in light of the services to be rendered.

**3.7** The Consultant will perform only the services authorized. Additional services will be compensated only as authorized in writing by the District. To the extent additional services are made necessary by any fault or error of Consultant in the performance of the Consultant's duties, responsibilities, nor obligations, the services will not be compensated.

**3.8** District's review or acceptance of documents will not be deemed as approval of the adequacy of the drawings, specifications, deliverables and other documents and such review or acceptance by District will not relieve Consultant of responsibility for their production.

**3.9** Consultant represents and warrants the following:

- .1** Consultant has the authority to enter into and perform this Agreement; the persons executing this Agreement on behalf of Consultant have the actual authority to bind Consultant to the terms of this Agreement;
- .2** Consultant will, at all times during the term of this Agreement, be properly licensed to perform the Services;
- .3** Consultant is an experienced firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement and to design and administer a project having the scope and complexity of the Project;
- .4** Consultant has the capabilities and resources necessary to perform Consultant's obligations under this Agreement;
- .5** Consultant is, or will become, in a manner consistent with the Standard of Care, familiar with all current laws, rules, and regulations which are applicable to the Project; and
- .6** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in this Agreement or at law.

**3.10** The Consultant will provide professional services for the District during all phases of the Project to which this Agreement applies, serve as the District's professional representative for the Project as set forth below, and will give professional consultation to the District during the performance of services hereunder.

**3.11** Consultant will provide the District with a W-9.

#### **ARTICLE 4** The District's Responsibilities

**4.1** The District will furnish the Consultant with information regarding requirements for the project, including programs setting forth the District's objectives, schedules, constraints and criteria.

**4.2** Unless otherwise provided in this Agreement, District will provide information requested by Consultant in writing in a timely manner regarding the requirements and limitations for the Project, which includes information regarding District's objectives, schedule, and criteria.

**4.3** The District will designate a representative fully knowledgeable about the project and with the authority to review and approve all project work.

**4.4** The District will render its own decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

#### **ARTICLE 5** General Provisions of the Agreement

**5.1** Performance of Services. Consultant will at all times perform these services diligently and without delay and will punctually fulfill all Agreement requirements consistent with the schedule for the

performance of services. Expiration or termination of the Agreement will not extinguish, prejudice, or limit either party's right to enforce this Agreement with respect to any default or defect in performance. Time is of the essence in the performance of this Agreement.

## **5.2 Instruments of Service.**

- .1** Documents, including those in electronic form, prepared by the Consultant and the Consultant's consultants are Instruments of Service intended and authorized for particular uses with respect to this Project and are not intended or represented to be suitable for any other purpose or for any other project.
- .2** The Consultant and the District warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the District and Consultant intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.
- .3** The Consultant and the Consultant's consultants shall retain common law, statutory and other reserved rights in their original work, including copyrights, except that the Consultant grants to the District a nonexclusive license to reproduce the Consultant's Instruments of Service for purposes of constructing, using and maintaining the Project. The Consultant shall obtain similar nonexclusive licenses from the Consultant's consultants consistent with this Agreement.
- .4** Documentation for all phases of the Project, including, without limitation, other Instruments of Service provided to the District shall be deemed the property of the District who may use them without the Consultant's further permission for any lawful purpose. The District may assign, delegate, sublicense, pledge or otherwise transfer its rights in the documentation within its sole discretion.
- .5** Any unauthorized use of the Instruments of Service for any purpose other than the Project shall be at the District's sole risk and without liability to the Consultant or the Consultant's consultants.

## **5.3 Confidentiality**

- .1** The Consultant warrants and represents that the Consultant and its subconsultants shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with its Services or the Project except (i) with prior written consent of the District, (ii) information that was / is in the public domain, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Consultant or its subconsultants, or (iv) as may be required to perform Services or by any applicable law.
- .2** The Consultant at any time upon the request of the District, shall immediately return and surrender to the District all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the District to Consultant. The Consultant and its subconsultants are entitled to each retain one copy of the documents.
- .3** The representations and warranties contained in this paragraph shall survive the complete performance of Consultant's and its subconsultants' Services or earlier termination of the Agreement.

**5.4 Access to Records.** For not less than three (3) years after the Agreement's expiration or termination, District will have access to the books, documents, papers, and records of Consultant and the Sub-consultants which pertain to the Agreement for the purpose of making audits, examination, excerpts, and transcripts. If, for any reason, any part of this Agreement, any Project-related consultant contract is involved in litigation, Consultant will retain all pertinent records for not less than three (3) years or until all litigation is resolved, whichever is longer. Consultant will provide District and the other entities referenced above with full access to these records in preparation for and during litigation.

**5.5 Indemnity.**

**.1 Claims for other than Professional Liability.** Consultant will indemnify, defend, and hold harmless the District, and its officers, agents, and employees, for, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature to the extent such claims, suits, actions, losses, damages, liabilities, costs and expenses that arise out of the fault of Consultant or its Sub-consultants, subcontractors, agents, or employees under this Agreement.

**.2 Claims for Professional Liability.** Consultant will indemnify, defend, and hold harmless the District, and its officers, agents, and employees, for, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature to the extent such claims, suits, actions, losses, damages, liabilities, costs and expenses that arise out of the professional negligence of Consultant or its Sub-consultants, subcontractors, agents, or employees.

**.3 District Defense Requirements.** Notwithstanding the obligations under Sections 5.5.1 and 5.5.2, District may, at any time and at its election, assume its own defense and settlement of any claims in the event that: it determines that Consultant is not adequately defending District or District believes it is in the District's best interests to do so. District reserves all rights to pursue any claims it may have against Consultant if District elects to assume its own defense.

**.4 District's Actions.** This Section 5.5 does not include indemnification by Consultant of the District or its officers, agents, and employees, for the negligent acts or omissions of District or its officers, agents, and employees, whether within the scope of the Agreement or otherwise.

**5.6 Consultant's Status.**

**.1** Consultant will perform all Services as an independent contractor. Although District reserves the right to set the delivery schedule for the Services to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means and manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant, Consultant's employees and the Sub-consultants are not "officers, employees, or agents" of District, as those terms are used in ORS 30.265.

**.2** Consultant will not have control or charge of, and will not be responsible for, the acts or omissions of other consultants or contractors under contract with District who are performing services on the Project. However, this provision does not in any way change Consultant's professional responsibility to report to District any information, including information on the performance of consultants or contractors outside the control or charge of Consultant, concerning activities or conditions that have or could have an adverse effect on District or the Project.

**.3** If any payment under this Agreement is to be charged against federal funds, Consultant certifies that it is not currently employed by the federal government.

**5.7 Successors & Assigns.** The provisions of this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns. After the original Agreement is executed, Consultant will not enter into any Sub-consultant agreements for any of the Services or assign or transfer any of its interest in this Agreement, without the prior written consent of District, and District's consent will not be unreasonably withheld.

**5.8 Compliance with Applicable Law.** Consultant will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Services. District's performance under this Agreement is conditioned upon Consultant's compliance with the provisions of ORS 279B.005 to 279B.025 and of ORS 279C.505, 279C.515, 279C.520, and 279C.530, which are hereby incorporated by reference. Consultant, the Sub-consultants, if any, and all employers providing Services, labor or materials under this Agreement are subject employers under the Oregon workers' compensation law and will comply with ORS 656.017.

**5.9 Governing Law; Jurisdiction; Venue.** This Agreement and all services performed hereunder will be interpreted under the laws of the State of Oregon and the exclusive venue for any lawsuit or action will be in Deschutes County, Oregon.

**5.10 Mediation:** The Consultant and the District agree that any dispute that may arise under this Agreement will be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to the commencement of litigation or arbitration. Such mediation will occur at Bend, Deschutes County, Oregon, and the mediator's fees and expenses will be shared equally by the parties who agree to exercise their best efforts in good faith to settle all disputes.

**5.11 Arbitration.** The Consultant and District agree to submit all complaints, disputes and controversies that may arise out of or in connection with this Agreement or services provided, and which are not resolved through mediation, to binding arbitration under the laws of the State of Oregon, and in accordance with the Construction Industry Arbitration Rules of the Portland Arbitration Association in effect at the time. Notwithstanding any rule to the contrary, either party will have the option to initiate arbitration according to the Arbitration Service of Portland in effect at the time. The decision of the arbitrator(s) will be final and binding upon both parties.

**5.12 Attorney Fees.** In the event suit or action is instituted to enforce any provision of this Agreement, the prevailing party will be entitled to recover its cost and disbursements together with reasonable attorney's fees to be fixed by the arbitrator or court at trial or on appeal.

**5.13 Severability.** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**5.14 Force Majeure.** Neither party will be responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to fire, riot, acts of God, terrorist acts or war where such cause was beyond such party's reasonable control. Each party will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations under the Agreement.

**5.15 Waiver.** The failure of District to enforce any provision of this Agreement will not constitute a waiver by District of that or any other provision.



**5.16 Third Party Beneficiaries.** Nothing contained in this Agreement will create a contractual relationship with or a cause of action in favor of a third party against District or Consultant. Consultant's Services under this Agreement will be performed solely for District's benefit and no other entity or person will have any claim against Consultant because of this Agreement for the performance or nonperformance of Services hereunder.

**5.17 Article Headings:** All article headings are inserted for convenience only and will not affect any construction or interpretation of this Agreement.

**5.18 Termination.**

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

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

Any termination under this subsection shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**.2** By written notice to Consultant of default, District may terminate the whole or any part of this Contract:

- a) If Consultant fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- b) If Consultant fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, after receipt of written notice of default from District.
- c) The rights and remedies of District provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**.3** Consultant may terminate this Contract with thirty (30) days' written notice to District if District fails to timely pay Consultant, or if the project is abandoned or delayed for any reason beyond Consultant's control. In the event of termination by Consultant, Consultant shall be entitled to

compensation for services provided up to and including the effective date of termination, plus termination expenses reasonably incurred by Consultant in winding down the project.

**SIGNATURE**

CONSULTANT

DISTRICT

\_\_\_\_\_  
Consultant Firm Name

Bend Park and Recreation District

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By/Title

\_\_\_\_\_  
By/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT A**  
**Scope of Work**

*[attach Consultants scope of work here as Attachment A]*

**ATTACHMENT B**  
**Schedule of Fees**

*[attach Consultants fee schedule here as Attachment B]*