



**Bend Park & Recreation**  
DISTRICT

799 SW Columbia Street Bend, OR 97702

# **REQUEST FOR PROPOSAL DOCUMENTS FOR INSURANCE AGENT OF RECORD**

**PROPOSALS DUE: September 25, 2018**

**2:00 P.M. AT THE DISTRICT OFFICE**

**799 SW Columbia Street, BEND, OR 97702**

## **PROJECT MANAGER**

**DAVID CROWTHER , 541-706-6102**

[dave@bendparksandrec.org](mailto:dave@bendparksandrec.org)

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## **Section 1. Purpose and General Information**

### **1.1. Introduction**

#### **1.1.1. Overview, Objectives, and Background**

Bend Park and Recreation District (“District”) is seeking written proposals from qualified individuals or agencies (Agency/Agent) to serve as our Agent of Record. Insurance services will include liability, property, auto, worker compensation, and employee benefits. Liability, Property and Auto will be one category, Worker Compensation will be a category and Employee Benefits will be the third category. The District may award all three categories to one agency or if in the District’s judgement that it would be in the best interest of the District to award the categories of work to more than one agency it could do so. The District invites Agencies to complete and submit a proposal based upon the scope of work outline in this RFP.

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.

#### **1.1.2. Project Term**

The project is anticipated to start by **November 2018**, and be completed by **October 2022**.

#### **1.1.3. Budget**

The District’s estimated budget for the work described in Section 2, Scope of Work, is \$15,000.

#### **1.1.4. Minimum Proposer Qualifications**

Be licensed in good standing with the State of Oregon for all lines of insurance identified in this request for proposals.

Demonstrate experience with public sector accounts of similar size, complexity, and scope of service.

Be able to provide ongoing risk management consulting services to the District.

Have and keep in force errors & omissions insurance policy of no less than \$5,000,000 per occurrence

### **1.2. Schedule**

<b>Event</b>	<b>Due Date</b>
RFP Issued	August 13, 2018
Final Questions Due	September 11, 2018
Last Addenda Issued (if any)	September 18, 2018

Proposals Due	September 25, 2:00 p.m. PST
Evaluation of Proposals	October 1-4, 2018
Interviews (if necessary)	October 8-10, 2018
Notice of Intent to Award	October 12, 2018
Commencement of Services	November 15, 2108

### 1.3. 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.

### 1.4. Solicitation Process

#### 1.4.1. Procurement Authority and Method

The District is issuing the RFP pursuant to its authority under Bend Park and Recreation District Resolution 416 and the District will follow our solicitation process for Personal Services as authorized in Resolution 416.

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.

#### 1.4.2. Reservation of District Rights

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 District Board of Director-adopted policy;
- 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.

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.

### **1.5. Submission of Proposals**

Proposals shall be received by the Project Manager listed on the Cover Sheet no later than the date and time specified at the address listed on the same. Proposals may be delivered via U.S. Mail, courier or hand-delivery. Mailed proposals shall be sent to the attention of the BUSINESS MANAGER. Late or faxed transmitted Proposals shall not be accepted.

### **1.6. 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.

### **1.7. Technical Requirements**

Proposals shall include, at a minimum:

- A brief description of the Proposer's approach and process anticipated to provide quality insurance services;
- A list of the Proposers key personnel;
- A list of Sub-consultants, (if used), including key personnel by category of service;
- Answers to Agent/Team and Agency questions;
- Creativeness in proposing alternative services to manage risk and /or premium without sacrificing breadth or depth of coverage or risk to the District financially; and
- A fee schedule showing total cost per the Scope of Work by category.

### **1.8. Evaluation and Award**

- The District shall evaluate all proposals received in response to the RFP on the completeness, quality, and applicability of their content, price, and any other provisions the District believes to be in the District's and Public's best interest.
- Proposals submitted that do not meet mandatory requirements will not be rated. The District may select an agency to represent the District as an Agent of Record through review of the Proposals submitted without doing interviews with top rated agency or agencies.
- The top rated Proposer or Proposers may be invited to an interview with the District's selection committee. If interviews are conducted, then they will be scored and added to proposal score.
- Negotiation of contract shall be per District Board of Director-adopted policy.

- Award shall be given to the Proposal that best meets the District's needs; consideration shall be given to Proposers expertise, method, and price by category.

### 1.9. Copies

Written proposals shall not exceed **twelve (12)** 8.5 x 11 inch pages; if double sided copies are provided this means **six (6)** sheets of double sided content, (excluding cover), bound and font size no smaller than 11 point.

- Use of recyclable materials is encouraged as part of the District's sustainable business practices in general. 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).
- **Four (4)** print 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, and shall be in a PDF format. All PDF files shall use compressed graphics for ease of distribution via email.

## Section 2. Scope of Work

### 2.1. Services

- Formulate and maintain a cost effective risk program within the parameters established by the District.
- Assist the District in identifying risks including valuation of real and personal property, loss of its use, and risks involved in District operations. Assist in risk evaluation by supplying claims data showing claims frequency and severity as needed.
- Analyze insurance plans for breadth, depth and premium of coverage prior to renewal of insurance coverage. Advocate for the District in marketing and retaining coverage. Assist the District in obtaining the broadest coverage plans for the premium paid.
- Provide ongoing risk management consulting services, including loss prevention services in occupational safety and health as well as liability areas, through the placement of an agency representative at the District Office for a minimum of 2 hours per month.
- Service all policies as the Agent of Record is authorized and/or directed by District.
- Assist in claims review and management.
- Be available to District staff and Board of Directors for counseling.
- Provide periodic review of insurance policies along with necessary reports and presentations.
- Ensure that insurance contracts are awarded in compliance with Oregon State Procurement Rules.
- Provide guidance and support when representing District's claims to insurance carriers.

### **Section 3. Proposal Form and Content**

#### **3.1.1 Agent/Team Questions**

- a. Provide detailed biography of each staff member working our account and their role.
- b. Who will be the primary contact for our account?
- c. How many public entities do you currently work with?
- d. How many years of experience do you have insuring public entities?

#### **3.1.2 Agency Questions**

- a. Describe your Agency's qualifications and how many years the Agency has been in business.
- b. Please list three public entity references with:
  - i. Entity Name:
  - ii. Contact:
  - iii. Phone:
- c. What marketing plan would you use to assure competitive premium quotes?
- d. What special services or support will you provide to the District?
- e. How would you approach developing and implementing a risk management program that includes proposals for optional and alternative ideas that will reduce District risk and/or reduce premium costs yet maintain broad coverage?
- f. If one of your staff is not meeting the needs of the District how would you propose to change that situation?
- g. How would you stay abreast of local issues concerning our District?
- h. Have you represented other Park and Recreation Districts? If so, which Districts and how many years have you represented them?
- i. What basis of remuneration would you propose and why?
- j. Describe your agency's culture?
- k. Provide a description of how your agency's culture impacts the services you provide.
- l. How are you owned (private, equity, etc.)?
- m. Why do you want our book of business?
- n. Can your agency provide comprehensive insurance services that include liability, property, auto, worker compensation, and employee benefits?

### **Section 4. Attachments**

- Attachment A – Sample Contract

## Section 5. Signature

Organization Name: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

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

E-mail Address:  
\_\_\_\_\_

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

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





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)

**Attachment A**  
**Sample Contract**  
**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 Agent of Record:

**<Insert Name>**

**<Insert Address>**

**<Insert City state and zip code>**

**<Insert phone number>**

For the following Project:

Insurance Agent of Record

The District and the Insurance Agent of Record agree as follows:

**ARTICLE 1 Project Parameters**

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

- .1 Project: The Agent of Record will provide Insurance Services which will include sourcing liability, property, auto, worker compensation, employee benefits insurance and risk management services.
- .2 Site: 799 SW Columbia Street, Bend, Oregon.
- .3 Fee: **<Insert Agent of Records total fee for contract>**

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

**1.3 Agent of Record's Compensation.** District will pay Agent of Record as provided in Exhibit B.



## **ARTICLE 2 Relationship of the Parties**

**2.1** Agent of Record will provide the Services for the Project in accordance with the terms and conditions of this Agreement. Agent of Record's performance of Services will be as a professional Agent of Record to District.

**2.2** This Agreement was awarded on the basis of the unique background and abilities of the key personnel of Agent of Record and the "Key Staff" and individually, the "Key Staff Person") in its proposal. Agent of Record will make available the Key Personnel identified in its proposal for the Services. If requested, Agent of Record will provide to District a list of the proposed Key Personnel to be assigned to the District. The list will include information on the professional background of each Key Person. If any Key Person becomes unavailable to Agent of Record, the Parties will mutually agree upon an appropriate replacement. Without prior notice to, and the written consent of District, Agent of Record 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. Agent of Record will remove any individual or Sub-Agent of Record from the Project to which District has a reasonable objection and Agent of Record will have a reasonable time period within which to find a suitable replacement.

**2.3** Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of Agent of Record, additional Services will entitle Agent of Record to additional compensation on condition that the Agent of Record 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 Agent of Record 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, Agent of Record will not be entitled to compensation for such services.

## **ARTICLE 3 Agent of Record's Responsibilities**

**3.1** The Agent of Record 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.

**3.2** The Agent of Record will defend all suits or claims for infringement of patent, trademark, or copyright for which the Agent of Record is responsible pursuant to this paragraph, which may be brought against the District, and the Agent of Record will be liable to the District for all losses arising therefrom, including costs, expenses, and attorney fees.

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

**3.4** All services provided by the Agent of Record 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 Agent of Records in the locale and on the type of project contemplated at the time such services are performed. The Agent of Record will be responsible for all services provided whether such

services are provided directly by the Agent of Record or by third party engaged by the Agent of Record. The Agent of Record will make all decisions called for promptly and without unreasonable delay.

**3.5 Agent of Record's Insurance.** Agent of Record 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 Agent of Record, its agents, representatives, and employees 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 Agent of Record's insurance will be primary and any insurance carried by the District will be excess and noncontributing. The Agent of Record 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. Agent of Record will maintain such insurance for a period of three (3) years after completion of the Project construction. Agent of Record will require each sub-Agent of Record engaged or employed by Agent of Record to be similarly insured with reasonably prudent limits and coverages in light of the services to be rendered.

**3.6** The Agent of Record 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 Agent of Record in the performance of the Agent of Record's duties, responsibilities, nor obligations, the services will not be compensated.

**3.7** Agent of Record represents and warrants the following:

**.1** Agent of Record has the authority to enter into and perform this Agreement; the persons executing this Agreement on behalf of Agent of Record have the actual authority to bind Agent of Record to the terms of this Agreement;

**.2** Agent of Record will, at all times during the term of this Agreement, be properly licensed to perform the Services;

**.3** Agent of Record is an experienced firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement;

- .4 Agent of Record has the capabilities and resources necessary to perform Agent of Record's obligations under this Agreement;
- .5 Agent of Record 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 services requested; 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.

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

**3.9** Agent of Record will provide the District with a W-9.

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

**4.1** The District will furnish the Agent of Record with information regarding requirements for the services required, including programs setting forth the District's objectives, schedules, constraints and criteria.

**4.2** District will furnish to Agent of Record a general over view of services, and also furnish to Agent of Record any reports regarding relevant information in the District's possession.

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

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

**4.5** 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 Agent of Record's services.

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

**5.1** Performance of Services. Agent of Record 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 The Agent of Record 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. If the District and Agent of Record 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.

.2 Any unauthorized use of the Instruments of Service for any purpose other than insurance services shall be at the District's sole risk and without liability to the Agent of Record.

### **5.3 Confidentiality**

.1 The Agent of Record warrants and represents that the Agent of Record shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with its Services 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 Agent or (iv) as may be required to perform Services or by any applicable law.

.2 The Agent of Record 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, and any other documents furnished by the District to Agent of Record. The Agent of Record is entitled to each retain one copy of the documents.

.3 The representations and warranties contained in this paragraph shall survive the complete performance of Agent of Record's and its 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 Agent of Record 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 Service-related Agent of Record contract is involved in litigation, Agent of Record will retain all pertinent records for not less than three (3) years or until all litigation is resolved, whichever is longer. Agent of Record 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. Agent of Record 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 arise out of the fault of Agent of Record or its, agents, or employees under this Agreement.

.2 Claims for Professional Liability. Agent of Record 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 arise out of the professional negligence of Agent of Record or its, 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 Agent of Record 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 Agent of Record if District elects to assume its own defense.

.4 District's Actions. This Section 5.5 does not include indemnification by Agent of Record 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 Agent of Record's Status.**

**.1** Agent of Record 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 Agent of Record's performance. Agent of Record is responsible for determining the appropriate means and manner of performing the Services. Agent of Record, Agent of Record's employees and the Sub-Agent of Records are not "officers, employees, or agents" of District, as those terms are used in ORS 30.265.

**.2** Agent of Record will not have control or charge of, and will not be responsible for, the acts or omissions of other Agent of Records or contractors under contract with District who are performing services or construction work on the Project. However, this provision does not in any way change Agent of Record's professional responsibility to report to District any information, including information on the performance of Agent of Records or contractors outside the control or charge of Agent of Record, 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, Agent of Record 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, Agent of Record will not enter into any 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.** Agent of Record 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 Agent of Record's compliance with the provisions of ORS 279A.055 and ORS 279B.005 to 279B.025, which are hereby incorporated by reference. Agent of Record and all employers providing Services 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 Agent of Record 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 Agent of Record 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. Such Arbitration will occur in Bend, Oregon.



**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 Agent of Record. Agent of Record's Services under this Agreement will be performed solely for District's benefit and no other entity or person will have any claim against Agent of Record 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 Agent of Record, 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 Agent of Record, its contractors, agents, and employees to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
- d) If Agent of Record becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed

by or against Agent of Record, if a receiver or trustee is appointed for Agent of Record, or if there is an assignment for the benefit of creditors of Agent of Record.

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 Agent of Record of default, District may terminate the whole or any part of this Contract:

- a) If Agent of Record fails to provide services called for by this agreement within the time specified or any extension thereof, or
- b) If Agent of Record 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 Agent of Record may terminate this Contract with thirty (30) days' written notice to District if District fails to timely pay Agent of Record, or if the project is abandoned or delayed for any reason beyond Agent of Record's control. In the event of termination by Agent of Record, Agent of Record shall be entitled to compensation for services provided up to and including the effective date of termination.

SIGNATURE

AGENT OF RECORD

Agent of Record Firm Name

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Date

SIGNATURE

DISTRICT

Bend Park and Recreation District

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Date





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

*[attach Agent of Record's scope of work here as Attachment A]*

**ATTACHMENT B**  
**Fee Schedule**

*[attach Agent of Record's fee schedule here as Attachment B]*