**Bend Park and Recreation District**

**Request for Proposal (RFP) for**

**Logo Wear Apparel and Promotional Items**

Bend Park and Recreation District is seeking proposals from a Vendor that can supply a wide array of logo wear apparel and promotional items utilized throughout our District. These items may include, but are not limited to: clothing (screen print and embroidery), hats, lip balms, bicycle lights, key chains and other promotional items.

The District currently employees approximately 500 full-time and part-time employees and the majority of these positions require uniform apparel partially provided by the District. These apparel items range from indoor to outdoor locations and must change seasonally. The District also has many opportunities to engage with members of the community at events and other occasions when promotional items are needed as giveaways. These items should be appropriate for a broad range of ages with broad appeal to patrons.

Sealed proposals will be accepted by **Julie Brown** at the Bend Park and Recreation District Administration Office, 799 SW Columbia Street, Bend, Oregon 97702 until **2:00 pm, October 22, 2018**, at which time the proposals will be opened publicly and read. No proposals will be accepted after this date and time.

The proposals shall be submitted in a sealed envelope and marked as follows:

**Proposer’s Name and RFP “Logo Wear and Promotional Items” 2018-06**

Request for Proposal documents, addenda, and notifications of results for this project may be viewed or printed on line from Bend Park and Recreation District <https://www.bendparksandrec.org/about/bids/>. Proposers are responsible for checking this web site for the issuance of any addenda prior to submitting a proposal. Proposals will be considered non-responsive if the proposal does not reflect all addenda.

Proposer’s with technical questions regarding the project, or requests for clarification or change, should be directed to Julie Brown at 541-706-6119 or **Julie@bendparksandrec.org**and must be received by October 11, 2018.

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

**REQUEST FOR PROPOSALS (RFP)**

for

Logo Wear Apparel and Promotional Items

Project Number – 2018-06

Date of Issuance: September 28, 2018

Proposals Due at 2:00 pm on October 22, 2018 at

799 SW COLUMBIA STREET, BEND, OR 97702

PROJECT MANAGER

Julie Brown

541-706-6119

Julie@bendparksandrec.org

# Introduction

## Overview and Background

Bend Park and Recreation District (District) is seeking a vendor that can supply a wide array of logo wear apparel and promotional items utilized throughout our District. These items may include, but are not limited to: clothing (screen print and embroidery), hats, lip balms, bicycle lights, key chains and other promotional items.

Bend Park and Recreation District is a special district 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 Statue 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 2018 population of approximately 90,000.

The District employs 116 full time and 398 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 majority of these positions require uniform apparel partially provided by the District. These apparel items range from indoor to outdoor locations and must change seasonally. The District also has many opportunities to engage with members of the community at events and other occasions when promotional items are needed as giveaways. These items should be appropriate for a broad range of ages with broad appeal to patrons.

## 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, and the District’s expectations. 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

## Solicitation Process

### 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 its solicitation process for goods and 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.

### 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 the 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;

#### Amend any Contracts that are a result of the RFP;

#### Negotiate a Contract based on the Scope of Work described in this RFP and to negotiate separately in any manner necessary to serve the best interest of the public pursuant to District Board of Director adopted policy;

#### Engage vendors 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 four (4) additional one year terms.

The intent of the RFP is to identify a Proposal from a Proposer with the level of resources and product to provide the products described in the RFP. Qualifications, performance history, products and service are primary considerations in the selection process. The District reserves the sole right to determine the best Proposal for the District’s needs.

## Submission of Proposals

Proposals shall be received by Julie Brown 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, emailed, courier or hand-delivery only. Late or faxed proposals shall not be accepted.

## 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.

## Technical Requirements

1.6.1. Proposals shall include, at a minimum:

#### A description of the Proposer’s approach and process anticipated to provide the goods and services identified in the scope of work described in Section 3

####  A list of the products available through your business

####  A list of account personnel/managers who would be working for our District and their experience

#### A schedule of values showing pricing per the scope of work including a rate sheet

####  A schedule showing type of product and expected delivery from order date

## Evaluation and Award

**1.7.1. Compliance with Laws and minimum Requirements**

* Bids will be examined by the District to determine that each bid is responsive, includes the minimum requirements established by the RFP, compliance with proposal procedures, and public contracting laws. The District will, for the purpose of evaluating proposals, apply any preferences for goods and services that have been manufactured, produced or performed in Oregon (ORS 279A.120), resident proposers (ORS 279A.120), recycled materials (ORS 279A.125), or printing performed within the State (ORS 282.210).

**1.7.2. Mistakes in Proposals**

* Minor informalities may be waived. Mistakes discovered after opening where the intended correct statement or amount is clearly evident or properly substantiated may be corrected. Where the intended correct statement or amount is not clearly evident or cannot be substantiated by accompanying documents, and where the statement or amount is material to determining compliance with the minimum requirements of the RFP, the proposal may not be accepted. The District reserves the right to waive technical defects, discrepancies and minor irregularities, and to not award a contract when it finds such action to be in the public interest.
	+ Accept the proposal which the District deems to be the most beneficial to the public and District,
	+ Negotiate with any proposer to further amend, modify, redefine or delineate its proposal,
	+ Negotiate and accept, without re-advertising, the proposal of the next-highest scored proposer, in the event that a contract cannot be successfully negotiated with the selected proposer, which may occur prior to the time a final recommendation for award is made for approval, and
	+ Further question any proposer to substantiate claims of experience, background knowledge, and ability.

**1.7.3. Notice of Award**

* + The District will provide written notice of its intent to award to a given proposer or proposers. The notice will be given by posting the Notice of Intent to Award on the District’s bid page, the same location where the RFP is located. The notice will be provided at least seven (7) days before the award, unless the District determines that a shorter notice period is more practicable.

###  Protest of Intent to Award

* + Any proposer that has submitted a proposal and is not recommended for award may protest the Executive Director. To be considered, a protest must be submitted in writing not less than seven (7) calendar days after notice of intent to award is given, and contain the grounds for the protest in accordance with District process.

### Rejection of Proposals

* + The District reserves the right to cancel a solicitation, or reject any or all proposals in whole or in part when the cancellation or rejection is in the District’s best interests as determined by the District. This includes rejecting any proposal not in compliance with all prescribed public solicitation procedures and requirements, and for good cause, rejecting all proposals upon a finding that it is in the public interest to do so.

If all proposals are rejected, new proposals may be called for in a new solicitation, or the proposals received may be considered with opportunity for supplemental submission. If there is partial rejection, the District may solicit supplemental information only from those proposers who submitted proposals, on the condition that it is unlikely that re-advertising would lead to greater competition. The Business Manager is delegated the authority to reject all proposals, prepare findings of best interests, and provide written notice of rejection of all proposals.

# Evaluation

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

### 2.1. Proposal

* The District will make the contract award based on the actual proposals received, including all factors identified in the RFP. In evaluating the proposals and selecting a vendor, District reserves the right to:
	+ Reject any and all proposals,
	+ Issue subsequent Requests for Proposals for the same or similar goods or services,
	+ Not award a contract for the requested goods and services, and
	+ Waive any irregularities or informalities.

|  |  |
| --- | --- |
| **2.2. Scoring Criteria** | **Maximum Point Value** |
|  |  |

1. Vendor capability to deliver products with a quick turn-around from

 date of order 20

1. Vendor scope of services related to apparel for uniforms and

participant activities, including range of price point capabilities, quality

of materials and sourcing options. 35

1. Vendor capability to provide personal and timely customer service to the Community Relations Department who will serve as the main point of contact. 10
2. Vendor ordering system capability to accept payment from the

 District or individual employees 10

1. Product pricing and sample URLs 25

**Total Points Possible 100**

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.

##  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.

**Four (4)** 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).

# Proposed Scope of Work

In an effort to improve brand management and increase cost efficiencies, BPRD is looking to streamline the logo wear apparel and promotional item ordering process throughout our organization, utilizing one vendor for all procurements. We’re looking for a vendor who understands our philosophy and culture and who will serve as a partner to ensure that our apparel and promotional items are relevant, appropriate, and consistent with our brand.

The elected vendor will serve as a brand ambassador for Bend Park and Recreation District, ensuring logo usage and brand standards are followed for all items ordered. In addition, the successful vendor must be able to:

* Provide quality products at an affordable price.
* Consistently deliver products on time and budget.
* Offer personal and timely customer service to the Community Relations Department who will serve as the main point of contact.
* Provide a sample price list.
* Accept payment by credit card from BPRD and individual employees that wish to purchase apparel items on their own.

#  Submission Requirements

## Describe your company and its capabilities to meet the expectations detailed above.

4.2. Describe the general time frame in which your company would be available to provide the Specifications/Scope of Services described.

4.3. Provide details on scope of services related to apparel for uniforms and participant activities, including range of price point capabilities, quality of materials and sourcing options.

4.4. Provide a listing of the top 10 promotional items you would recommend for BPRD as giveaways at park district events.

4.5. Provide a specific product type, samples and accompanying bids for the following products.

* 1,000 Frisbees, 9”
* 2,500 bike lights
* 1,000 water bottles, 24 oz. and BPA free
* 500 baseball caps with embroidered logo, 2 locations

4.6. Provide URLs to examples of ordering websites facilitated for customers (no more than three examples).

4.7. Please indicate expected turn-around time from placement of order to receipt of order; be sure to include method and expense of delivery. If logo application to apparel or promotional items requires additional service providers, please describe how this process impacts delivery timing.

4.8. Provide references, including a contact name and telephone number, of three organizations or businesses that your service. References should be for organizations that have purchased items similar in scope.

# Attachments

#### Attachment A – Sample Contract

# 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:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bend Park and Recreation District

AGREEMENT FOR GOODS AND 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 Vendor:

<**Insert Name**>

<**Insert Address**>

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

<**Insert phone number**>

For the following Project:

Logo Wear Apparel and Promotional Items

The District and the Vendor agree as follows:

# Project Parameters

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

* + 1. Project: <**Insert short description of Project**>
		2. Site: <**Insert Site Address**>, Bend Oregon.
		3. Fee: <**Insert Vendors total fee for contract**>
	1. Scope of Services. Vendor will provide all services related to completion of the Project as more particularly described below and in Exhibit A.
	2. Vendor’s Compensation. District will pay Vendor as provided in Exhibit B.

# Relationship of the Parties

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

### In administering this Agreement, District may retain the services of an independent project manager and other Vendors as needed to fulfill District’s objectives.

### Vendor will provide a list of all sub-Vendors which Vendor intends to utilize on the Project (the “Sub-Vendors”). This list will include such information on the qualifications of the Sub-Vendors as may be requested by District. District reserves the right to review the Sub-Vendors proposed. Vendor will not retain a Sub-Vendor to which District has a reasonable objection.

### This Agreement was awarded on the basis of the unique background and abilities of the key personnel of Vendor and Sub-Vendors identified by Vendor (collectively, the “Key Staff” and individually, the “Key Staff Person”) in its proposal. Vendor will make available the Key Personnel identified in its proposal for the Project. If requested, Vendor 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 Vendor, the Parties will mutually agree upon an appropriate replacement. Without prior notice to, and the written consent of District, Vendor 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. Vendor will remove any individual or Sub-Vendor from the Project to which District has a reasonable objection and Vendor will have a reasonable time period within which to find a suitable replacement.

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

# Vendor’s Responsibilities

### The Vendor 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 Vendor will develop a project schedule consistent with requirements of the Scope of Services and the Vendor will complete each phase of the services in accordance with the Schedule.. The Vendor will contract directly with and will pay such Sub Vendor.

### The Vendor will pay all royalties and license fees which may be due by reason of materials or methods employed by the Vendor or its Sub Vendor 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 Vendor will defend all suits or claims for infringement of patent, trademark, or copyright for which the Vendor is responsible pursuant to this paragraph, which may be brought against the District, and the Vendor will be liable to the District for all losses arising therefrom, including costs, expenses, and attorney fees.

### The Vendor will not be relieved of responsibility for errors or omissions or other defects in any other documents prepared by the Vendor for the District’s review and approval.

### The Vendor 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 Vendor’s services. If the Vendor fails to remove any lien or adjust any other claim relating to the Vendor’s services, by bonding or otherwise, the District may, without recourse by the Vendor, pay the lien or claim and charge such payments, with costs incurred, to the Vendor.

### All services provided by the Vendor 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 Vendors in the locale and on the type of project contemplated at the time such services are performed. The Vendor will be responsible for all services provided whether such services are provided directly by the Vendor or by Sub Vendor engaged by the Vendor. The Vendor will make all decisions called for promptly and without unreasonable delay.

### Vendor’s Insurance. Vendor 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 Vendor, its agents, representatives, employees and Sub Vendor 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 Vendor’s insurance will be primary and any insurance carried by the District will be excess and noncontributing. The Vendor will furnish the District with Certificates of Insurance evidencing coverage and provisions as required.

### 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.

### 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.

### 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 Vendor of responsibility for their production.

### Vendor represents and warrants the following:

### Vendor has the authority to enter into and perform this Agreement; the persons executing this Agreement on behalf of Vendor have the actual authority to bind Vendor to the terms of this Agreement;

### Vendor will, at all times during the term of this Agreement, be properly licensed to perform the Services;

### Vendor 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;

### Vendor has the capabilities and resources necessary to perform Vendor's obligations under this Agreement;

### Vendor 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 design and construction of the Project; and

### 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.

### The Vendor 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.

### Vendor will provide the District with a W-9.

1. The District’s Responsibilities

### The District will furnish the Vendor with information regarding requirements for the project, including programs setting forth the District’s objectives, schedules, constraints and criteria.

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

### 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 Vendor’s services.

1. General Provisions of the Agreement

### Performance of Services. Vendor 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.

### Instruments of Service.

### Specifications and other documents, including those in electronic form, prepared by the Vendor and the Vendor's Vendors 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.

### The Vendor 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 Vendor 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.

### Confidentiality

### The Vendor warrants and represents that the Vendor and its Sub Vendor 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 Vendor or its Sub Vendor, or (iv) as may be required to perform Services or by any applicable law.

### The Vendor 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 Vendor. The Vendor and its Sub Vendor are entitled to each retain one copy of the documents.

### The representations and warranties contained in this paragraph shall survive the complete performance of Vendor’s and its Sub Vendor’ Services or earlier termination of the Agreement.

### 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 Vendor and the Sub-Vendors 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 Vendor contract or any Project-related construction contract(s) is involved in litigation, Vendor will retain all pertinent records for not less than three (3) years or until all litigation is resolved, whichever is longer. Vendor will provide District and the other entities referenced above with full access to these records in preparation for and during litigation.

### Indemnity.

### 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 Vendor 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 Vendor if District elects to assume its own defense.

### District's Actions. This Section 5.5 does not include indemnification by Vendor 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.

### Vendor’s Status.

### Vendor 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 Vendor’s performance. Vendor is responsible for determining the appropriate means and manner of performing the Services. Vendor, Vendor’s employees and the Sub-Vendors are not “officers, employees, or agents” of District, as those terms are used in ORS 30.265.

### Vendor will not have control or charge of, and will not be responsible for, the acts or omissions of other Vendors 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 Vendor’s professional responsibility to report to District any information, including information on the performance of Vendors or contractors outside the control or charge of Vendor, concerning activities or conditions that have or could have an adverse effect on District or the Project.

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

### 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, Vendor will not enter into any Sub-Vendor 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.

### Compliance with Applicable Law. Vendor 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 Vendor'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. Vendor, the Sub-Vendors, 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.

### 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.

### Mediation: The Vendor 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.

### Arbitration. The Vendor 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.

### 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 trail or on appeal.

### 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.

### 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.

### 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.

### 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 Vendor. Vendor's Services under this Agreement will be performed solely for District's benefit and no other entity or person will have any claim against Vendor because of this Agreement for the performance or nonperformance of Services hereunder.

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

### Termination.

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

1. 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.
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 Contract.
3. If any license or certificate required by law or regulation to be held by Vendor, its contractors, agents, and employees to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
4. If Vendor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Vendor, if a receiver or trustee is appointed for Vendor, or if there is an assignment for the benefit or creditors of Vendor.

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

1. If Vendor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
2. If Vendor 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.
3. 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** Vendor may terminate this Contract with thirty (30) days’ written notice to District if District fails to timely pay Vendor, or if the project is abandoned or delayed for any reason beyond Vendor’s control. In the event of termination by Vendor, Vendor shall be entitled to compensation for services provided up to and including the effective date of termination, plus termination expenses reasonably incurred by Vendor in winding down the project.

**SIGNATURE**

|  |  |
| --- | --- |
| VENDOR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Vendor Firm Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By/Title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date | DISTRICTBend Park and Recreation District \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By/Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |

ATTACHMENT A

Scope of Work

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

ATTACHMENT B

Fee Schedule

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