



Don Horton, Executive Director
799 SW Columbia Street
Bend, OR 97702
tel: 541.706.6100 fax: 541.388.5429
www.bendparksandrec.org

Bend Park and Recreation District

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made as of [insert]

Between the District:

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

And the Consultant:
[insert]

For the following Project:

DEI Initiative

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: DEI Initiative
- .2 Site: 799 SW Columbia Street, Bend, Oregon.
- .3 Schedule: Completion by [insert]
- .4 Fee: \$[insert]
- .5 Project Number: [insert]

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 Consultant's scope of work here as Attachment A]

ATTACHMENT B
Schedule of Fees

[attach Consultant's fee schedule here as Attachment B]