



REQUEST FOR PROPOSALS (RFP)

**FOR:
CREDIT CARD PROCESSOR**

**ISSUED:
MARCH 8, 2021**

**PROPOSALS DUE:
MARCH 23, 2021 at 2:00 PM PACIFIC TIME**

**ISSUED BY:
BEND PARK AND RECREATION DISTRICT
799 SW COLUMBIA STREET
BEND, OREGON 97702**

play for life

District Office | Don Horton, Executive Director

799 SW Columbia St., Bend, Oregon 97702 | www.bendparksandrec.org | (541) 389-7275

INVITATION TO SUBMIT

Bend Park and Recreation District Request for Proposals (RFP) for Credit Card Processor

Bend Park and Recreation District is seeking Proposals from **organizations providing credit card processing services through Vermont Systems Inc. RecTrac.**

Sealed proposals will be accepted by **Justin Sweet, Business Analyst**, or designee at the Bend Park and Recreation District Administration Office, 799 SW Columbia Street, Bend, Oregon 97702 until **2:00 pm, March 23, 2021**. No Proposals will be accepted after this date and time.

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

Attachment A – Sealed Proposal Label

or

Proposer's Name, Proposal for Credit Card Processor

There is no pre-Proposal meeting for this Solicitation.

The RFP, including all addenda, attachments, and solicitation notifications, may be viewed and printed online from Oregon Procurement Information Network (ORPIN) at <https://orpin.oregon.gov/open.dll/welcome>.

Proposals will be considered non-responsive if the Proposal does not reflect all addenda.

The District's **Contract Administrator** shall be **Justin Sweet, Business Analyst**, or designee, contact via email to justins@bendparksandrec.org, or via phone at (541) 706-6102.

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
CREDIT CARD PROCESSOR

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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 (the “District”) is seeking qualified organizations interested in providing credit card processing services. Proposals must be based on the “Scope of Work” described in Section 4 below and in compliance with all prescribed requirements of this Request for Proposals (RFP).

The District utilizes Vermont Systems Inc.’s RecTrac software as the District’s recreation program management tool. RecTrac manages registration, pass renewals, payments, rental reservations, sports leagues schedules and more. Currently credit card payments are processed by Plug’n Pay both online and in-person.

An Oregon special district separate from the City of Bend, the District is governed by a five-member, elected Board of Directors and managed by an Executive Director. The District maintains and operates more than 3,000 acres of developed and undeveloped parkland, including 81 parks, 70 miles of trails, and multiple recreation facilities. When operating at normal capacity, the District accepts credit card payments at five separate locations, each with a unique merchant ID. The District serves a population of around 91,000 people and processed approximately \$7,000,000 through 97,000 credit card transactions during 2019, data from 2020 is not representative of normal business volume. Of those 97,000 transactions, approximately \$2,800,000, through 69,000 transactions, were processed on-site, and approximately \$4,200,000, through 28,000 transactions, were processed online*.

Two months of representative transaction data is provided for Proposers’ reference in Attachment C – Transaction Data.

*Currently all cancellations and deposit refunds are processed on-site, which results in decreasing the total dollar amount of transactions and increasing the number of transactions.

1.1.2. Project Term

The District anticipates signing a contract by mid-April 2021, with services fully implemented by mid-May 2021. If a contract is awarded, the contract will be effective from the date fully executed through June 30, 2026.

The District will have the option to renew the contract for five (5) additional one (1) year terms. The pricing and rates provided by the Proposer to whom the contract is awarded must remain fixed for the initial term, and for each renewal term, if the contract is renewed.

1.1.3. Minimum Proposer Qualifications

Organizations interested in Proposing must currently be a Vermont System Inc. PCI-compliant External Redirect Interface (ERI) commercial gateway partner for RecTrac. Any Proposal received from a Proposer not a current commercial gateway partner will be deemed non-responsive and will be returned to the Proposer upon request.

1.2. Schedule

The District reserves the right to deviate from this schedule, deviations from scheduled dates prior to RFP Closing will be made via written addendum.

| EVENT | DUE DATE |
|---|-----------------------------------|
| RFP Release, (Date of Issuance) | March 8, 2021 |
| Solicitation/Specification Protest Deadline | March 16, 2021 |
| Protest Response Deadline (estimated) | On or about March 19, 2021 |
| RFP Closing Date and Time | March 23, 2021 at 2:00 PM |
| Interviews (if held) | Week of March 29, 2021 |
| Notice of Intent to Award | On or about March 31, 2021 |
| Board of Directors Approval | On or about April 20, 2021 |

1.3. Definitions

For general definitions see Oregon Administrative Rules (OAR) 137-046-0110, which are incorporated by reference.

- **“Contract Administrator”** and **“Project Manager”** shall mean the person the District has designated as the single point of contact for this RFP.
- **“Contractor”** shall mean the Proposer awarded a contract to perform the Statement of Work.
- **“Cooperative Procurement”** means a procurement conducted on behalf of more than one governmental agency.
- **“District”** shall mean Bend Park and Recreation District.
- **“EMV Chip”** shall mean the specifications administered by EMVCo for global interoperability between chip-based payment applications and acceptance terminals to enable secure contact and contactless financial transactions.
- **“Permissive Cooperative Procurement”** means a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified.

- **“Point-to-Point Encryption”** (P2PE) shall mean a third-party solution provider that provides a combination of secure devices, applications, and processes that encrypt data from the point of interaction until the data reaches the solution provider’s secure decryption environment.
- **“Proposal”** shall mean a written response to this RFP.
- **“Proposer”** shall mean a person or organization submitting a written response to this RFP.
- **“Purchasing Contracting Agency”** means a governmental agency that procures goods or services from Contractor based on the original contract established by District.
- **“RFP”** and **“Solicitation”** shall mean this Request for Proposals.
- **“Scope of Work”** shall mean the general description of the supplies and services for which the District has issued this RFP, 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 provisions in the final Contract which set forth and define in detail the agreed-upon objectives, expectations, performance standards, and other obligations of Contractor under the Contract.

1.4. Solicitation Process

1.4.1. Availability of Documents

The RFP, including all addenda, attachments, and solicitation notifications, may be viewed and printed online from Oregon Procurement Information Network (ORPIN) at <https://orpin.oregon.gov/open.dll/welcome>. 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. If you have questions regarding access to solicitation documents contact ORPIN Help at (503) 373-1774 or email at info.orpin@oregon.gov.

1.4.2. Reservation of District Rights

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

- Amend the RFP by written addendum pursuant to OAR 137-047-0430;
- Delay or suspend the RFP without liability to any Proposer if the District finds it is in the best interest of the District to do so pursuant to Oregon Revised Statutes (ORS) 279B.100;
- Cancel the RFP or reject any or all Proposals received, in whole or in part, upon finding that it is in the best interest of the District to do so pursuant to ORS 279B.100;
- Waive any minor informality, correct a clerical error, or permit a Proposer to withdraw a Proposal to the extent allowed pursuant to OAR 137-047-0470;
- Reject any Proposal that fails substantially to comply with all prescribed RFP procedures and requirements pursuant to OAR 137-047-0640;

- Negotiate certain contract terms and conditions to the extent allowed under OAR 137-047-0310(1)(b);
- Amend any Contracts that are awarded as a result of the RFP to the extent allowed under OAR 137-047-0800;
- Engage other organizations to perform the same or similar services; and
- Extend any Contracts that result from the RFP without an additional competitive procurement process to the extent allowed under OAR 137-047-0800.

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 Scope of 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. If awarded, the District will award the Contract to the responsible Proposer submitting the Proposal which is in the District's best interests for accomplishing the District's needs.

1.5. Single Point of Contact

All technical and non-technical questions about the requirements of the RFP, procurement process, Scope of Work, or evaluation process shall be directed to the Contract Administrator listed on the Invitation to Submit.

1.6. Methods of Seeking Modifications to RFP, Contractual Provisions or Specifications; Solicitation Protests

1.6.1. Procedure

- Requests for modifications to this RFP may be requested in writing, as follows: (a) request for clarification; (b) formal submittal of requests for changes to the RFP, contractual terms or specifications; or (c) formal submittal of protests of the RFP, contractual terms or specifications.
- A Proposer may submit to the Contract Administrator a written request for changes to the RFP, contractual terms or specifications. The request shall include the reason for requested changes, supported by factual documentation, and all other information required by OAR 137-047-0730.
- Envelopes containing requests for clarification, requests for change, and protests shall be marked as follows:
 - Request for Clarification / Change / Protest
 - RFP Number
 - Project Name
- Requests for modification must be received by the Contract Administrator prior to the protest submission deadline specified in Section 1.2. The submission deadline may be extended by addendum. No requests for clarification, requests for change or protests

regarding the RFP, contractual terms or specifications shall be considered if received after the protest submission deadline, as may be extended by subsequent addendum.

1.6.2. Requests for Clarification / Questions

Questions, including requests for explanations of the meaning or interpretation of RFP provisions, shall be submitted in writing via mail, hand delivery, or email, addressed to the Contract Administrator at the address listed on the Invitation to Submit, and must arrive prior to the protest submission deadline specified in Section 1.2.

1.6.3. Protests of RFP

Proposers may submit to the Contract Administrator a written protest of the solicitation documents, contractual terms or specifications, or addenda to the solicitation documents. To be considered, protests shall:

- Identify the Proposer's name and reference the RFP title.
- Include: (a) the grounds that demonstrate how the solicitation process is contrary to law or how the RFP is unnecessarily restrictive, legally flawed, or improperly specifies a brand name; (b) evidence that supports the grounds on which the protest is based; and (c) an explanation of the relief sought, including a statement of the proposed changes to the solicitation process or RFP provisions, requirements or terms and conditions that the Proposer believes will remedy the conditions upon which the protest is based.
- Be signed by the Proposer's authorized representative
- Be submitted to the Contract Administrator to the address listed on the Invitation to Submit by the protest deadline specified in Section 1.2.

The District shall not consider solicitation protests that do not meet the requirements of this Section. The District shall resolve all solicitation protests in accordance with OAR 137-047-0730.

1.6.4. Protest of Addenda

Pursuant to OAR 137-047-0430(4) Proposers may submit a request for change or protest to any addendum issued by the District as provided in Section 1.6.3. provided, however, such request for change or protest must be received by the end of the District's next business day after issuance of the addendum, or protest deadline specified in Section 1.2, whichever is later. If the deadline for submission of a request for change or protest to an addendum falls after the protest deadline specified in Section 1.2, the District may only consider a request for change or protest to the addendum, and shall not consider a request for change or protest to matters not added or modified by the addendum.

1.7. Submission of Proposals

Proposals shall be received by the Contract Administrator no later than the Closing date and time specified in Section 1.2. Proposals may be delivered via U.S. Mail, courier, or hand-delivery. Mailed

Proposals shall be sent to the Contract Administrator at the address specified in the Invitation to Submit. Late, faxed, or electronically transmitted Proposals shall not be accepted. 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.

1.7.1. Withdrawal of Proposals

If a Proposer wishes to withdraw a submitted Proposal, it shall do so prior to the Closing date and time. The Proposer shall submit a written request to withdraw, signed by the Proposer, on the Proposer's letterhead, to the Contract Administrator at the address listed on the Invitation to Submit.

1.8. Opening of Proposals

Pursuant to ORS 279B.060(6)(a) Proposals shall be opened and the names of all Proposers shall be made available to the public. Proposals will not be read aloud. The District shall open Proposals in a manner that avoids disclosing Proposal contents to competing Proposers.

1.8.1. Inspection of Proposals

Pursuant to ORS 279B.060(6)(a) and (b), Proposals will be open to inspection after issuance of a Notice of Intent to Award. If a Proposal contains any information that may be considered exempt from disclosure under Oregon Public Records Law, ORS Chapter 192, the Proposer must clearly designate the portions of its Proposal that Proposer claims are exempt from disclosure, along with a justification and citation to the authority relied upon. Application of the Oregon Public Records Law shall determine whether any information is actually exempt from disclosure. Identifying the Proposal in whole as exempt from disclosure is not acceptable. If the Proposer fails to identify the portions of the Proposal that the Proposer claims are exempt from disclosure and the authority used to substantiate that claim, the Proposer will be deemed to have waived any future claim for non-disclosure of that information.

1.9. Cooperative Procurement

This RFP is a Permissive Cooperative Procurement. Purchasing Contracting Agencies may utilize a Permissive Cooperative Contract pursuant to ORS 279A.215. Generally:

- Agencies may establish a contract with Contractor to purchase the goods and services awarded by this RFP;
- Agencies may not materially change or alter the terms, conditions, or prices from the original contract between Contractor and District.

Proposers must state (on the Proposer Information and Certification) that it will/will not extend the terms, conditions and prices to any agency that desires to establish a Contract awarded to Contractor resulting from this RFP. Volumes of other agencies are not included in this RFP.

Section 2. Proposal Requirements

Proposals shall address the Proposal and submission requirements set forth in this RFP. Proposals shall respond to all elements of information requested without exception. Proposals that do not meet the requirements set forth in the RFP shall be deemed non-responsive and shall not be further considered.

2.1. Administrative Proposal Requirements

2.1.1. Proposal Requirements

Proposals shall not exceed a total of **16 single sided or 8 double sided** 8.5 x 11-inch pages with a minimum 11-point font size. District-provided forms and attachments are not included in the maximum page count.

2.1.2. Submission of Proposals in Electronic Format

- The District's preferred Proposal submission format is in PDF on a single USB flash drive.
- Proposals submitted in PDF should be consolidated into as few separate files as possible.
- Proposals submitted in PDF shall include **one (1) Proposal original** containing the Proposer's Price Proposal, and **one (1) Proposal copy** excluding the Proposer's Price Proposal.
- Notwithstanding the District's requirement that Proposals be submitted in electronic format, Proposals must be submitted on a physical storage device via hand delivery, courier, or mail to the location and address listed on the Invitation to Submit. Proposals may not be submitted via email, fax, file transfer, or any other electronic means.

2.1.3. Hardcopy Proposal Submission

- Hardcopy (paper) Proposals may be submitted via hand delivery, courier, or mail to the location and address listed on the Invitation to Submit.
- Hardcopy Proposals shall include **1 Proposal original** containing the Proposer's Price Proposal, and **1 Proposal copy** excluding the Proposer's Price Proposal.
- Use of recycled materials is required as part of the District's sustainable business practices. The District requires the use of submittal materials (i.e. paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. Proposers are encouraged to bind Proposals with a single binder clip. The District prohibits the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings, or plastic or glossy covers or dividers. Proposers are encouraged to print/copy on both sides of a single sheet of paper whenever possible.

2.2. Technical Proposal Requirements

The Proposal shall describe how the Proposer meets each of the technical requirements described in the Scope of Work in Section 4. The Proposal shall be evaluated as described in Section 3.

2.2.1. Vermont Systems Inc. Approved (Pass/Fail)

- Proposers shall provide a statement that Proposer is at time of Proposing: (i) a current Vermont System Inc. External Redirect Interface (ERI) commercial gateway partner for RecTrac; (ii) PCI compliant; (iii) an EMV chip compatible provider with Point-to-Point Encryption, and; (iv) able to support online transactions.

2.2.2. Insurance Coverage (Pass/Fail)

- Proposers shall provide a statement that Proposer currently has, or will be able to obtain, insurance coverage meeting or exceeding the insurance requirements detailed in Attachment D – Sample Contract.

2.2.3. References (Pass/Fail)

- Proposers shall provide three (3) professional references from projects of similar scope to that described in this RFP. References from public agencies of similar size or type shall be preferred.
- Proposers shall provide the following information for each reference:
 - Organization name
 - Contact person (first and last name)
 - Contact phone number
 - Contact email address
 - Duration of project with reference
 - Volume of transactions during peak traffic times, list online and in-store separately
 - Volume of annual transactions
- Reference-provided letters of recommendation are acceptable.

2.2.4. Experience and Qualifications (15 Points Possible)

- Proposers shall describe their organization’s experience and qualifications in providing the services described in Section 4 – Scope of Work. Each Proposer should highlight the experience and qualifications that the Proposer believes distinguishes them from their competitors. Higher scores will be awarded for experience and qualifications from within the last five (5) years, relevant to the Scope of Work, and from public agencies of similar size or type.

2.2.5. Key Staff (10 Points Possible)

- Proposers shall detail the key staff proposed for the implementation of this project, long-term account management, and customer service. Proposers shall include relevant details on key staff experience and qualifications.

2.2.6. Implementation (25 Points Possible)

- Proposers shall describe their process for implementation of their credit card processing system. Proposers should highlight their methods for preventing disruption to the District's customers and staff, and how Proposer can tailor the implementation process to the District. The implementation process description should describe at minimum:
 - The proposed training approach for District staff on the system.
 - The proposed timeline for implementation.
 - The proposed implementation, timeline, and distribution of hardware.

2.2.7. Services and Systems (25 Points Possible)

- Proposers shall describe and provide samples of the statements and/or reports available to the District for account reconciliation, and the frequency of availability of these statements and/or reports.
- Proposers shall describe their customer service and technical support personnel availability, and available contact methods.
- Proposers should provide the average number of phone calls, emails, or other form of communication necessary to resolve card transaction issues among existing RecTrac clients.
- Provide detailed information and specifications on proposed hardware requirements.
- Proposers should describe how their services and systems uniquely meet or exceed the requirements described in Section 4 – Scope of Work.

2.2.8. Pricing (25 Points Possible)

- Proposers shall provide an itemized Price Proposal along with their Proposal detailing all setup costs, transaction fees, and all other applicable costs, fees, and expenses. Proposers must provide fixed pricing for the initial five (5) year term. The pricing provided in the successful Proposer's Price Proposal will be incorporated in the awarded contract and may not be changed during the initial term.
- Price Proposals from all responsive Proposals will be ranked by applying proposed prices against 2-months of representative transaction data provided in Attachment C. Price Proposals must address all costs required to complete the services described in this RFP. The lowest overall Price Proposal will receive the full points available. All other Price Proposals will be weighed against the lowest Price Proposal.

2.2.9. Presentations, Demonstrations or Interviews (25 Points Possible) – If Held

- The District may conduct and score presentations, demonstrations, or interviews as provided in Section 3.4.

Section 3. Evaluation and Award

3.1. Evaluation Process

3.1.1. Evaluation Overview

The District shall evaluate and score all responsive Proposals on the completeness, quality, and applicability of their contents in accordance with the following criteria:

- Section 3.2, Evaluation of Minimum Requirements (Pass / Fail)
- Section 3.3, Evaluation of Technical Proposal (Scored)
- Section 3.4, Evaluation of Presentations, Demonstrations and Interviews, if held (Scored)
- Section 3.5, Ranking of proposals

3.1.2. Evaluation Committee

The District shall establish an evaluation committee of at least three (3) individuals, which may consist of District staff, government partners, or community partners, who shall review, evaluate, and score each Proposal.

3.1.3. Disqualification

Any attempt by a Proposer to improperly influence a member of the evaluation committee during the Proposal review and evaluation process shall result in rejection of that Proposal.

3.2. Evaluation of Minimum Requirements (Pass / Fail)

The evaluation committee shall review all Proposals on a pass/fail basis and determine if each Proposal meets the minimum technical Proposal requirements described in Section 2 of this RFP. Proposer's failure to comply with the instructions or to submit a complete Proposal may result in the Proposal being deemed non-responsive. Only those Proposals determined responsive to the minimum requirements shall be considered for further evaluation.

3.3. Evaluation of Technical Proposal (Scored)

The evaluation committee shall score all Proposals based on the completeness and quality of information described in Section 2.2. Points assigned by each evaluation committee member shall be added together and divided by the total number of evaluation committee members to compute an average score for the evaluation criteria. Price Proposals will not be scored until after the evaluation committee has scored all other evaluation criteria.

The evaluation committee may request additional clarification from any Proposer for any portion of the Proposals pursuant to OAR 137-047-0600(2). If a Proposal is unclear, the Proposer may be asked to provide clarification. Proposers shall remain available during the evaluation period to respond to requests for additional clarification. Proposers shall submit written clarification(s) within 24 hours

(Monday-Friday) following receipt of the request. No new Proposal documentation may be submitted, however, and clarifications may not be used to correct an otherwise non-responsive Proposal. Failure to provide clarification may result in a lower score.

The evaluation committee shall assign points to its evaluation of each Proposal as follows:

3.3.1. Scoring

| SCORING CRITERIA | MAXIMUM POINT VALUE |
|---|----------------------------|
| Vermont Systems Inc. Approved | Pass/Fail |
| Insurance Coverage | Pass/Fail |
| References | Pass/Fail |
| Experience and Qualifications | 15 |
| Key Staff | 10 |
| Implementation | 25 |
| Services and Systems | 25 |
| Pricing | 25 |
| Total Points Possible | 100 |
| Presentations, Demonstrations or Interviews (if held) | 25 |
| Total Combined Points Possible | 125 |

3.3.2. References

See Section 2.2.7 for reference requirements.

The District reserves the right to request references in addition to those provided by a Proposer, to investigate any references (whether or not furnished by a Proposer), and to investigate the past performance of any Proposer. The District may investigate the qualifications of a Proposer, including, but not limited to: successful performance in providing similar services; compliance with specifications and contractual obligations; completion or delivery of services on schedule; and proper payment of suppliers, subcontractors, and workers. The District may postpone the award or execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation. This is in addition to any other District rights reserved in Section 1.4.3. The District may make up to two (2) attempts to contact each of the reference sources. These attempts shall be made during normal business hours. Each reference that is contacted will be asked to provide information relevant to the categories listed in Section 2.2.

3.4. Evaluations of Presentations, Demonstrations, and Interviews (if conducted)

- 3.4.1.** The evaluation committee may elect to interview one or more Proposers, based on the evaluation committee's identification of those Proposers who have a reasonable chance of being selected as the most advantageous Proposer, if the evaluation committee considers it necessary or desirable. If interviews are held, the evaluation committee will determine the number of Proposers to invite according to whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most advantageous Proposer. If the evaluation committee conducts interviews, the interview process will be used to supplement and clarify the information contained in the Proposal.
- 3.4.2.** The District will provide written notice to all Proposers identifying those Proposers selected for interview. Proposers not selected for interview may protest the evaluation and determination of the interview pool in accordance with OAR 137-047-0720.
- 3.4.3.** Based upon Proposal scoring, as modified by the interview, Proposers will be given final ranking by the evaluation committee which will be used to determine contract award.
- 3.4.4.** If deemed advisable by the District, the District may send details regarding the format and scope of the interviews to those Proposers invited to interview.
- 3.4.5.** Proposers will bear all costs for attending the interviews and preparing any presentation materials.

3.5. Ranking of Proposals

The evaluation committee shall add the interview score for each interviewed Proposer to the evaluation score for the initial evaluation of that Proposer's Proposal in order to determine the total score and ranking of each Proposal.

3.6. Award Notification and Process

If, once the evaluation committee determines the highest-ranked Proposer, the District elects to move forward with awarding a Contract, the District shall send a notice of intent to award to all Proposers. The District may, either orally or in writing, terminate negotiations with the highest-ranked Proposer if the District and the highest-ranked Proposer are unable to reach agreement within a reasonable amount of time for any reason. The District may then negotiate with the second ranked Proposer, and if necessary, with each successively ranked Proposer until negotiations result in a Contract or the District cancels the RFP pursuant to ORS 279B.100.

The District reserves the right to negotiate a final Contract and Statement of Work that are in the best interests of the District. Prior to execution of a contract the District shall obtain the Contractor's agreement to perform the Scope of Work and meet the performance standards set forth in the final negotiated Statement of Work.

3.7. Protest of Award

If the conditions specified in ORS 279B.410(1) are met, a Proposer may submit a written protest of the District's intent to award a Contract. Protests must be submitted within seven (7) days after the District issues a notice of intent to award. A Proposer may submit a protest of the intent to award only as allowed by, and only in compliance with, OAR 137-047-0740. The District will resolve all timely submitted protests in accordance with ORS 279B.410(4) and OAR 137-047-0740.

Section 4. Scope of Work

4.1. Required Specifications

At the time a Proposal is submitted, the Proposer must be providing, to its current customers, credit card processing services meeting the minimum required specifications provided in this Section 4.1. Proposals which do not include reference to the minimum required specifications shall be deemed non-responsive. Proposers shall describe how the following minimum required specifications are met:

- Ability to process credit cards through Visa, MasterCard, American Express, and Discover payment card networks.
- Status as a Vermont System Inc. PCI compliant External Redirect Interface (ERI) commercial gateway partner for RecTrac.
- Use PCI-compliant Point-to-Point Encryption which minimizes the District, the District's hardware and equipment, and the District's network from the scope of PCI compliance.
- EMV Chip compatible.
- Process online and on-site transactions.
- Support installment billing.
- Provide on-site devices that support digital signature capture.
- Customer service and technical support 7-days a week 8:00 am – 5:00 pm Pacific Time.

In addition to the minimum required specifications, pursuant to ORS 279B.060(2)(c), the Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the services at all times for the duration of the contract.

4.2. Preferred Additional Specifications

In addition to the minimum required specifications, the District will give preference to Proposers who are able to meet the preferred additional specifications provided in this Section 4.2. Proposals should describe how the following preferred additional specifications are met:

- Single provider gateway and processor.
- Point-to-Point Encrypted mobile payment processing solution including devices supporting off-site use.

- High level of reporting functionality, including ad-hoc reports, supporting the District's ability to investigate, audit, and reconcile transactions on demand.
- Ability to refund transactions from the District's current credit card processor, Plug'n Pay.
- Automatically update expired credit card information for installment billing accounts.
- Damaged device and hardware coverage or replacement plans.
- Ability to readily move devices between multiple workstations.
- Customer service and technical support 7-days a week 24-hours a day.

Section 5. Attachments

- Attachment A – Sealed Proposal Label
- Attachment B – Proposer Information and Certification
- Attachment C – Transaction Data
- Attachment D – Sample Contract

Section 6. Proposal Submission Checklist

All attachments and Proposal content requirements specified in this RFP must be included in Proposals.

The following Proposal content and attachments are required to be returned with the Proposal:

- _____ **Detailed Proposal Content Requirements** as specified in Section 2.2
 - _____ Section 2.2.1 – Statement of Vermont Systems Inc. approved status
 - _____ Section 2.2.2 – Statement of Insurance Coverage
 - _____ Section 2.2.3 – References
 - _____ Section 2.2.4 – Experience and Qualifications
 - _____ Section 2.2.5 – Key Staff
 - _____ Section 2.2.6 – Implementation Plan
 - _____ Section 2.2.7 – Services and Systems
 - _____ Section 2.2.8 – Price Proposal
 - _____ **Responses to Section 4 – Scope of Work**
 - _____ **Attachment B – Proposer Information and Certification**
-

Proposers are *encouraged* to use the following attachment to identify their Proposal, it is provided for Proposers convenience and is *not* required.

Attachment A – Sealed Proposal Label

The following attachments are *not* to be returned with the Proposal. Proposers must review these attachments, the terms and conditions of each will be incorporated in the contract for the work.

Attachment C – Transaction Data

Attachment D – Sample Contract

This checklist is provided for the Proposer’s convenience in assembling your Proposal and is *not* required to be returned with the Proposal.

SEALED PROPOSAL ENCLOSED

DELIVER TO:

BEND PARK AND RECREATION DISTRICT

ATTN: JUSTIN SWEET

799 SW COLUMBIA STREET

BEND, OR 97702

PROPOSALS MUST BE RECEIVED NO LATER THAN:

March 23, 2021, 2:00 PM PACIFIC TIME

FOR: **CREDIT CARD PROCESSOR**

PROPOSER NAME: _____

Please attach the above label to the outside of your sealed Proposal.

ATTACHMENT B - PROPOSER INFORMATION AND CERTIFICATION

FIRM/COMPANY NAME: _____

STREET ADDRESS: _____

CITY, STATE, ZIP CODE: _____

WEBSITE: _____

PRIMARY CONTACT NAME: _____

PRIMARY CONTACT TITLE: _____

PRIMARY CONTACT TELEPHONE: _____

PRIMARY CONTACT EMAIL: _____

Name and title of the primary individual authorized to represent the Proposer in any negotiations and sign any contracts that may result:

NAME: _____ **TITLE:** _____

Proposer, pursuant to ORS 279A.120(1), (check one) is / is not a resident Proposer. If not, indicate State of residency: _____.

Proposer (check one) will / will not extend the terms, conditions, and prices to any Participating Agency that intends on establishing a contract with Proposer, if Proposer is awarded a Contract.

1. Proposer hereby certifies that Proposer has read, understands, and agrees to comply with all terms and conditions of this Solicitation and the resulting Contract.
2. Proposer acknowledges receipt of all Addenda issued under this Solicitation, if any.
3. Proposer hereby certifies that Proposer has complied or will comply with all requirements of local, state, and federal laws, and that no legal requirements have been or will be violated in making or accepting this Solicitation.
4. Proposer hereby certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, against any disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055 in obtaining any required subcontract.
5. Proposer agrees to comply with Oregon tax laws in accordance with ORS 305.385.
6. Proposer hereby certifies that no conflict of interest, as defined below, exists which precludes an impartial Proposal from being submitted by Proposer and that if such conflict should arise, Proposer will immediately notify the District.

- a. No officer, employee, or agent of the Proposer has any personal financial interest, direct or indirect, in the operation of Bend Park and Recreation District or its affiliates.
7. Proposer hereby certifies the price(s) and amount of this Proposal shall be arrived at independently and without consultation, communication or agreement with any other consultant, Proposer or potential Proposer, and they will not be disclosed before Contract award.
8. Proposer hereby certifies that neither the price(s) nor the amount of this Proposal, and neither the approximate price(s) nor approximate amount of this Proposal, shall be disclosed to any other firm or person who is a Proposer or potential Proposer, and they will not be disclosed before Contract execution.
9. Proposer hereby certifies no attempt has been made or will be made to induce any firm or person to refrain from Proposing on this Solicitation or to submit any noncompetitive Proposal or other complementary Proposal.
10. Proposer hereby certifies that its Proposal is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Proposal.
11. Proposer agrees that if awarded the Contract, Proposer shall be authorized to do business in the State of Oregon at the time of the award.
12. District shall not be liable for any claims or be subject to any defenses asserted by Proposer based upon, resulting from, or related to, Proposer's failure to comprehend all requirements of this Solicitation.
13. District shall not be liable for any expenses incurred by Proposer in both preparing and submitting its Proposal, or in participating in the Proposal evaluation/selection or Contract negotiation progress, if any.
14. The signatory of this Proposer Information and Certification is a duly authorized representative of the Proposer, has been authorized by Proposer to make all representations, attestations, and certifications contained in this Proposal document, Solicitation, and all Addenda, if any, issued, and to execute this Proposal document on behalf of Proposer.
15. By signature below, the undersigned Authorized Representative hereby certifies on behalf of Proposer that all contents of this Proposer Information and Certification and the submitted Proposal are truthful, complete and accurate. Failure to provide information required by this Solicitation may ultimately result in rejection of the Proposal.

PROPOSER SIGNATURE

| | |
|---------------------|-------|
| Signature | Title |
| Name (please print) | Date |
| Email | Phone |





ATTACHMENT C - TRANSACTION DATA

| | Transaction Volume | Transaction Amount |
|--------------------|--------------------|--------------------|
| March 2019 Online | 3,583 | \$ 927,868.39 |
| March 2019 On-site | 6,556 | \$ 362,544.55 |
| July 2019 Online | 1,122 | \$ 110,743.41 |
| July 2019 On-site | 7,685 | \$ 338,239.32 |

*Transaction details are available in the Excel formatted file.

This Credit Card Processing Contract (this “**Contract**”) is effective as of [Click to enter a date] (the “**Effective Date**”).

Between:

Bend Park and Recreation District (the “District”)
799 SW Columbia Street
Bend, OR 97702

and

[Enter Contractor Legal Name] (“**Contractor**”)
[Enter Contractor Street Address]
[Enter Contractor City, State Zip Code]

For the following project (the “**Project**”):

Credit card processing services as further detailed below.

The District and Contractor (each a “Party” and, collectively, the “Parties”) agree as follows:

- 1. STATEMENT OF WORK.** Contractor shall provide all software, hardware, equipment, facilities, labor, material, and other services necessary for proper execution and completion of the work described below (the “**Work**”):
 - 1.1.** Process PCI-compliant credit card payments, online and on-site integrated with Vermont System Inc. RecTrac software, through the Visa, MasterCard, American Express, and Discover payment networks.
 - 1.2.** Deposit customer credit card payments into the District’s designated account on a daily basis.
 - 1.3.** Manage and maintain all Payment Card Industry Data Security Standard (PCI DSS) requirements for the District, including PCI-compliant Point-to-Point Encryption.
 - 1.4.** Maintain EMV Chip compatibility.
 - 1.5.** Support installment billing.
 - 1.6.** Provide on-site devices that support digital signature capture.
 - 1.7.** Provide customer service and technical support 7 days a week with minimum availability of 8:00 AM – 5:00 PM Pacific Time.
 - 1.8.** Provide monthly statements showing credit card payments processed, categorized by transaction type and location, deposits credited to the District, and service fees deducted from deposits by Contractor.
 - 1.9.** Provide system for the production and export of custom reports by the District.

2. **CONTRACT TERM.** This Contract shall be effective upon Effective Date and the term shall continue through [\[Click to enter a date\]](#). The District may elect to renew this Contract for five (5) additional terms of one (1) year each. The District may exercise its renewal right by written notice to Contractor not less than 60 days prior to the last day of the then-expiring term. (Notwithstanding the foregoing, the District’s deadline to exercise its renewal right shall be extended one day for each day that Contractor fails to timely deliver renewal term pricing, as required by Section 3.2.) Timely delivery of a renewal notice shall make this Contract binding for one (1) additional one-year term without further action of the Parties. The renewal term shall commence on the day immediately following the expiration of the immediately preceding term. The terms and conditions for the renewal term shall be identical with the immediately preceding term except that the District shall no longer have any renewal right that has previously been exercised.

3. **CONTRACT PRICE.** The District will pay Contractor the following amounts:

3.1. **Original Term Prices:**

Startup/Required Equipment:

| | |
|--------------|-----------------------|
| [Enter Unit] | [\$[Enter Unit Price] |
| [Enter Unit] | [\$[Enter Unit Price] |
| [Enter Unit] | [\$[Enter Unit Price] |
| [Enter Unit] | [\$[Enter Unit Price] |
| [Enter Unit] | [\$[Enter Unit Price] |

Processing Fees:

| | |
|--------------|-----------------------|
| [Enter Unit] | [\$[Enter Unit Price] |
| [Enter Unit] | [\$[Enter Unit Price] |
| [Enter Unit] | [\$[Enter Unit Price] |
| [Enter Unit] | [\$[Enter Unit Price] |
| [Enter Unit] | [\$[Enter Unit Price] |

3.2. **Renewal Term Pricing.** Not less than 120 days prior to the last day of the five (5) year original term, Contractor shall provide the District with unit pricing for Work to be performed during the renewal term(s). Contractor’s renewal pricing shall apply to each one (1) year renewal term (if exercised).

4. PAYMENT TERMS. The District shall pay Contractor as follows:

- 4.1. For startup/required equipment, the District shall pay Contractor within 30 days of receipt of a properly itemized invoice following completion of the Work performed during the Project startup phase.
- 4.2. For processing services, Contractor will deduct the applicable fee, as provided in Section 3 above, from funds deposited into the District's account.

5. CONTRACT DOCUMENTS. As used in this Contract, the "Contract Documents" consist of the following documents (listed in order of precedence for the purpose of determining conflicting provisions in the Contract Documents):

- 5.1. This Contract [, including all exhibits and attachments];
- 5.2. The Terms and Conditions attached as Exhibit A;
- 5.3. The District's Request for Proposals issued [Click to enter a date]; and
- 5.4. Contractor's Proposal dated [Click to enter a date] submitted in response to the District's Request for Proposals.

6. MISCELLANEOUS.

- 6.1. **ENTIRE AGREEMENT; SIGNATURES.** The Contract Documents contain the entire understanding of the Parties regarding the subject matter of this Contract and supersede all prior and contemporaneous negotiations and agreements between the Parties, whether written or oral, with respect to the subject matter of this Contract. This Contract may be signed in counterparts. An electronically transmitted signature page will be considered an original signature page. At the request of a Party, the other Party will confirm an electronically transmitted signature page by delivering an original signature page to the requesting Party.
- 6.2. **SEVERABILITY.** If any provision of this Contract 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 shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- 6.3. **WAIVER.** Failure of either Party to enforce any provision of this Contract shall not constitute waiver of the right to require such performance in the future nor of the right to enforce any other provision of this Contract. Payment by the District shall not constitute the District's waiver of any rights under this Contract.
- 6.4. **TIME.** Time is of the essence in the performance of all obligations under this Contract. Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements of the Work.

- 6.5. AMENDMENTS.** This Contract may only be amended by written instrument, signed by both Parties.
- 6.6. ASSIGNMENT.** Except for portions of the Work performed by Contractor's employees or subcontractors approved by the District, this Contract is not assignable or transferable by Contractor without the District's prior written consent, which may be withheld in the District's sole discretion, and any purported assignment or transfer without the District's consent shall be void.
- 6.7. FURTHER ASSURANCES; SURVIVAL.** The Parties will sign such other documents and take such other actions as are reasonably necessary to further effect and evidence this Contract. The termination of this Contract, regardless of how it occurs, will not relieve a Party of obligations that have accrued before the termination. All Contractor representations, warranties, covenants, and obligations contained in this Contract (including, without limitation, Contractor's indemnity obligations) will survive the termination of this Contract.
- 6.8. GOVERNING LAW; VENUE.** This Contract shall be interpreted and administered under the laws of the State of Oregon without regard to conflict of laws principles. Any claim or dispute that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- 6.9. ATTORNEYS' FEES.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Contract, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing Party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing Party's reasonable attorneys' fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.
- 6.10. INTERPRETATION.** As used in this Contract, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, governmental agency, political subdivision, or any other entity, as context may require. All pronouns, and any variations, will be deemed to refer to the masculine, feminine, or neutral, as the identity of the person may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The word "days" means calendar days unless expressly provided otherwise. The titles, captions, or headings of the articles and sections in this Contract are inserted for convenience of reference only and are not intended to be a part, or to affect the meaning or interpretation, of this Contract.

The Parties, by their signatures below, acknowledge that they have read and understood this Contract and agree to be bound by its terms and conditions:

CONTRACTOR:

Contractor/Firm Name

Signature

Date

Name (please print)

Title

BEND PARK AND RECREATION DISTRICT:

Signature

Date

Name (please print)

Title

SAMPLE



1. DEFINITIONS.

- 1.1. **“Confidential Information”** means any information received by Contractor from the District or its customers under this Contract that may be exempt from disclosure under the Oregon Public Records Law (Oregon Revised Statutes (ORS) Ch. 192), or is otherwise privileged or protected by law from disclosure including, without limitation, all Personal Information.
- 1.2. **“Cooperative Procurement”** means a procurement conducted on behalf of more than one governmental agency.
- 1.3. **“Permissive Cooperative Procurement”** means a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified.
- 1.4. **“Personal Information”** means any person’s: financial account number, credit or debit card number, social security number, driver’s license number, state identification number, passport number, physical or mailing address, username or email address (either in combination with password), first name or first initial and last name in combination with any other Personal Information, and any other information unique to such person.
- 1.5. **“Purchasing Contracting Agency”** means a governmental agency that procures goods or services from Contractor based on the original contract established by District.
- 1.6. **“Security Breach”** means any suspected, alleged, or confirmed loss, disclosure, theft, or compromise of any Confidential Information maintained by a Party including, without limitation, cardholder data or card transaction information relating to cardholder data services.

2. **COMPLIANCE WITH APPLICABLE LAW.** Throughout the term of this Contract, Contractor shall comply with all applicable laws relating to performance of the Work including, without limitation, the Oregon Consumer Information Protection Act (ORS 646A.600 - 646A.628).

3. PCI COMPLIANCE.

- 3.1. **CONTRACTOR OBLIGATIONS.** Contractor is responsible for (i) the security of Confidential Information that it possesses or otherwise stores, processes, or transmits on behalf of the District, or to the extent that it could impact the security of the District’s data environment, even if all or a portion of the Work is subcontracted to third parties; (ii) providing all cardholder data payment processing services for every merchant account for which it is processing such payments; and (iii) managing and maintaining all PCI DSS requirements for the District. At all times for the duration of the term of this Contract, Contractor shall comply with PCI DSS requirements and the payment card brands’ rules and regulations, including without limitation: (i) providing data security reports as may be required by the credit card issuer; (ii) paying any fines and penalties in the event Contractor fails to comply with the PCI DSS requirements or arising from a Security Breach; and (iii) fully cooperating with, and providing access to, the credit card issuer or credit card brand to conduct a security review of Contractor’s policies and procedures.

3.2. Examinations and Audits. Upon reasonable advance written notice, Contractor agrees to permit the District (and its designees) to conduct a review of its books, records, operations and facilities during normal business hours. In addition, upon reasonable prior written notice and as directed by any card organization, Contractor agrees to permit any person acceptable to any card organization to examine and audit the records, operations and facilities of Contractor that are relevant to such card organization.

3.3. Business Continuity. Contractor shall maintain appropriate business continuity procedures and systems to ensure security of cardholder data in the event of a disruption, disaster or failure of Contractor's primary data systems.

4. DATA SAFEGUARDS. Contractor shall:

4.1. access, store, and use Confidential Information solely for the purpose of providing the Work required by this Contract;

4.2. maintain physical, technical, and administrative safeguards to protect Confidential Information against unauthorized access, use, or disclosure; and

4.3. not disclose Confidential Information to any third parties other than Contractor's employees or approved subcontractors and consultants who have a legitimate need to access such Confidential Information and solely for the purpose of providing the Work, and only if such third parties are bound by confidentiality and non-disclosure provisions no less restrictive than those set out in this Contract, including compliance with all applicable laws and regulations.

5. SECURITY BREACH. If Contractor suspects or becomes aware of any unauthorized disclosure of or access to any Confidential Information by any unauthorized third party, or any other Security Breach relating to any Confidential Information held or stored by Contractor under this Contract or in connection with the performance of the Work, Contractor shall immediately notify the District in compliance with the provisions in Section 6 below, and shall take all appropriate steps necessary to restore the integrity, security, and confidentiality of the Confidential Information.

6. NOTIFICATION OF SECURITY BREACH.

6.1. In the event of any suspected, alleged, or confirmed Security Breach, Contractor shall immediately notify (i) the District's [IT Manager] by leaving a voicemail at (541) [###-####] and sending an email to [XXXX]@bendparksandrec.org, and (ii) any other persons or agencies required in the PCI DSS requirements and applicable law. Contractor shall fully cooperate with any examinations provided for in Section 3.3 above. Upon Contractor's suspected or actual discovery of a Security Breach, Contractor will not alter or destroy any related records and will maintain complete and accurate documentation regarding any modifications made to the Confidential Information records.

6.2. Pursuant to ORS 646A.604, if Contractor discovers a Security Breach, Contractor shall give notice to the District as soon as is practicable, but not later than 10 days after discovery of the Security Breach or having reason to believe that a Security Breach as occurred. Contractor's notice shall include:

6.2.1. The number of customers affected by the Security Breach;

- 6.2.2. The contact information for the affected customers;
- 6.2.3. A general description of the Security Breach;
- 6.2.4. The approximate date of the Security Breach;
- 6.2.5. The type of Confidential Information that was subject to the Security Breach;
- 6.2.6. Current contact information for notification of national consumer reporting agencies; and
- 6.2.7. If available, Contractor's then-current form of Security Breach notice to consumers.

6.3. Contractor agrees to assume responsibility for notifying all individuals (and government agencies and national consumer reporting agencies, if applicable) affected by a Security Breach in accordance with applicable state and federal law and to indemnify, defend, and hold harmless the District and its officers and employees from and against any claims, damages or other harm related to such breach.

7. **INDEMNIFICATION AND HOLD HARMLESS.** Contractor agrees to hold harmless, indemnify, and defend the District, and its officers, directors, employees, agents, volunteers, and contractors, from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature (including, without limitation, reasonable attorneys' fees and settlement costs) resulting from, arising out of, or related to:

- 7.1. Any misrepresentation, breach or alleged breach of any representation, warranty, agreement, or obligation under this Contract by Contractor or its affiliates or subcontractors;
- 7.2. Any actual or alleged performance or nonperformance of the Work including, without limitation, any of the following which are attributable to Contractor or its affiliates or subcontractors: breach of network security, introduction of computer viruses, failure to maintain PCI DSS requirements; Security Breach, or extortion;
- 7.3. Any claim or liability arising from any contract between Contractor and any third party, whether or not made to effectuate the purposes of this Contract, and regardless of whether Contractor enters into such contracts as the District's agent or as principal;
- 7.4. Any actual or alleged violation of any applicable law including, without limitation, right of privacy or the right of publicity, by Contractor;
- 7.5. Taxes, together with interest and penalties, that are Contractor's responsibility under the Contract;
- 7.6. Infringement or alleged infringement of any patent, copyright, trademark, trade secret, right of privacy, right of publicity, or other personal or proprietary right of a third party in connection with the Work; and
- 7.7. Any other claim related to the Work and due to any act, negligence, willful misconduct, or omission by Contractor or its affiliates or subcontractors or their respective officers, directors, employees, suppliers, subcontractors, agents, successors, or affiliates.

8. **INDEPENDENT CONTRACTOR.** Contractor is an independent contractor, and not an employee, of the District. Contractor is free from direction and control over the means and manner of performing the Work,

subject only to the right of the District to specify the desired results, and the District reserves the right to evaluate the quality of the Work. The District will not withhold any taxes from any payments made to Contractor, and Contractor will be responsible for paying all taxes arising out of or resulting from Contractor's performance of the Work, including, without limitation, income, social security, workers' compensation, and employment insurance taxes. Contractor is solely responsible for obtaining all licenses, approvals, and certificates necessary or appropriate to perform the Work. This Contract does not create a joint venture, partnership, or agency relationship between the District and Contractor. Contractor does not have the authority to bind the District to any contract or other agreement or represent to any person that Contractor is an agent of the District. Contractor has the authority to hire other persons to assist Contractor in performing the Work (and has the authority to fire such persons). The District shall neither have nor exercise any control or direction over the means or manner by which Contractor or its employees under its control shall perform their work and other functions.

9. **FORCE MAJEURE.** Neither Party shall be responsible for any nonperformance or delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, government-imposed restrictions, or any other cause which is beyond the Party's reasonable control (each a "**Force Majeure Event**"). Such Party shall, however, promptly notify the other Party of any Force Majeure Event and shall make all reasonable efforts to perform such obligation as soon as reasonably possible after the end of such cause for delay or nonperformance. No Force Majeure Event shall commence or be deemed to have occurred unless, within 10 days of the event constituting the Force Majeure Event, the Party claiming such delay has provided written notice to the other specifying the circumstances that the claiming Party contends constitutes a Force Majeure Event. Notwithstanding the foregoing, the District may terminate this Contract upon written notice to Contractor after reasonably determining that the Force Majeure will likely prevent successful performance of this Contract.

10. TERMINATION.

- 10.1. **MUTUAL CONSENT.** This Contract may be terminated at any time by mutual written agreement of the Parties.
- 10.2. **TERMINATION FOR CONVENIENCE.** The District may, at the District's sole discretion, terminate this Contract, in whole or in part, upon 30 days' written notice to Contractor. In the event of such termination, the District shall pay Contractor the fees and expenses reasonably incurred prior to such termination.
- 10.3. **TERMINATION BY DISTRICT.** The District may, at the District's sole discretion, terminate this Contract, immediately upon written notice to Contractor, or on such later date as the District may establish in its notice, upon the occurrence of any of the following events:
- 10.3.1. The District fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient to pay for the Work.

10.3.2. Federal, state, or local laws, rules, regulations, ordinances, or guidelines are modified or interpreted in a way that either the purchase of the Work by the District under this Contract, or the District's payment for the Work from the planned funding source, is prohibited.

10.3.3. Contractor is in default of this Contract beyond all applicable notice and cure periods.

10.4. TERMINATION BY CONTRACTOR. Contractor may terminate this Contract if the District fails to make any payment to Contractor within 10 days of written notice from Contractor that such payment is past due.

11. EVENTS OF DEFAULT. The occurrence of any of the following events shall constitute a default by Contractor under this Contract:

11.1. Contractor institutes, or has instituted against it, insolvency, receivership, or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;

11.2. Contractor no longer holds any license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained a replacement license or certificate within 14 days after receipt of notice of the default from the District; or

11.3. Contractor fails to perform any covenant, warranty, or other obligation under this Contract, including failure to perform any obligation within the time specified or any extension of that time, and Contractor fails to cure such nonperformance within 14 days after receipt of written notice from the District; provided, however, if the default is of such a nature that it cannot be completely remedied within the 14-day cure period, Contractor shall not be in default if Contractor begins correction of the default within such 14-day period and diligently proceeds in good faith to effect the remedy as soon as practicable.

12. NOTICES. All notices or other communications required or permitted by this Contract must be in writing, delivered to the Parties at the addresses set forth above, or such other address as a Party may designate by written notice to the other Party. Notices are considered delivered upon actual receipt if delivered personally, by fax (with electronic confirmation of delivery), by email (with hard copy delivered within two business days), or by a nationally recognized overnight delivery service; or at the end of the third business day after the date deposited in the United States mail, postage pre-paid, certified, return receipt requested.

13. INSURANCE.

13.1. INSURANCE COVERAGES. Contractor shall obtain and maintain throughout the term of this Contract, the following insurance coverages:

13.1.1. GENERAL LIABILITY. Commercial general liability insurance (occurrence form), including coverage for bodily injury, property damage, independent contractors, contractual liability (covering Contractor's indemnification obligations under this Contract), personal injury, products and completed operations, with limits of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Contractor's liability insurance shall be primary and will not seek contribution from any insurance or self-insurance maintained by the District.

- 13.1.2. ERRORS & OMISSIONS.** Errors and Omissions insurance providing coverage for Contractor's performance of the Work, with limits of not less than \$2,000,000. If Contractor's Errors and Omissions insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Contract and Contractor shall purchase at its sole expense either: (i) an Extended Reporting Endorsement (also, known as Tail Coverage); or (ii) Prior Dates Coverage from any new insurer with a retroactive date back to the date of, or prior to, the inception of this Contract; or (iii) demonstrate through certificates of insurance that Contractor has maintained continuous coverage with the same or original insurer. Coverage provided under items (i), (ii), or (iii) will continue as long as the law allows.
- 13.1.3. CYBER LIABILITY.** Cyber Liability insurance, covering both first- and third-party damages, with limits of not less than \$2,000,000 per occurrence or claim. Coverage shall be sufficiently broad to respond to Contractor's duties and obligations under this Contract and shall include, but not be limited to, claims involving: (i) infringement of copyright, trademark, trade dress, or other intellectual property; (ii) invasion of privacy violations; (iii) information theft; (iv) damage to or destruction of electronic information; (v) release of private information; (vi) alteration of electronic information; (vii) extortion; and (viii) network security. Contractor's Cyber Liability insurance shall provide coverage for Security Breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations. Such insurance must include affirmative contractual liability coverage for Contractor's Security Breach indemnity obligations under this Contract.
- 13.1.4. WORKERS' COMPENSATION INSURANCE.** Statutory limits. Contractor shall comply with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers including employers' liability coverage with limits not less than \$500,000. No workers' compensation insurance has been or will be obtained by the District for Contractor or Contractor's employees and subcontractors.
- 13.1.5. ADDITIONAL INSURED.** Contractor shall name the District, its officers, employees, and agents as additional insureds on all liability policies other than errors and omissions and workers' compensation policies.
- 13.1.6. NOTICE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits, or non-renewal of insurance coverage(s) without 30-days written notice from Contractor, or Contractor's insurer(s), to District. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract by District.
- 13.2.** Contractor shall, within 5 days after execution of this Contract and prior to commencement of any Work, furnish the District with original certificates of insurance, including the additional insured and all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause), and a copy of the declarations and endorsement page of the commercial general liability policy, listing all policy endorsements. Contractor shall deliver new certificates,

endorsements, and declarations and endorsement pages to the District within 5 days after replacement or renewal of any required insurance policy. If Contractor does not provide evidence of required insurance, the District shall have the immediate right at the District's sole discretion to procure the required insurance on behalf of Contractor and to charge and deduct the cost of such insurance from payments due to Contractor. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Section 13, at any time. Failure to obtain the required documents prior to the Work beginning shall not waive the Contractor's obligation to provide them.

13.3. Contractor understands that the stated limits of liability are the minimum acceptable by the District, Contractor further understands it is the responsibility of Contractor to determine the appropriate limits of liability in excess of the District's minimum acceptable limits to meet Contractor's risk.

13.4. If Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

14. NON-DISCRIMINATION. Contractor shall comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race; color; gender; age; religion; ancestry, national origin; U.S. military veteran status; marital status; sexual orientation; disability; medical condition; source of income; or political affiliation in programs, activities, services, benefits, or employment in connection with this Contract.

15. COMPLIANCE WITH LAWS. Contractor shall comply with all laws, codes, regulations, and applicable requirements imposed by governmental authorities having jurisdiction over the Work.

16. WARRANTY. Contractor will perform the Work to the best of Contractor's ability, diligently, and without delay, in good faith, in a professional manner in accordance with the highest professional standards of the industry, free from any material errors, omissions, or defects, and in strict compliance with the terms and conditions of this Contract.

17. COOPERATIVE CONTRACT. [This Contract is not a Permissive Cooperative Contract.] / [This Contract is a Permissive Cooperative Contract.]

17.1. Pursuant to ORS 279A.215, Purchasing Contracting Agencies may establish a contract with Contractor to purchase the goods and services required under this Contract.

17.2. Purchasing Contracting Agencies may not materially change or alter the terms, conditions, or prices set forth in this Contract.]

- END OF TERMS AND CONDITIONS -