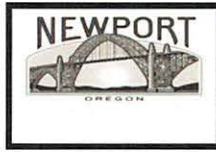


3022



**AUTHORIZATION FOR AGREEMENTS, MOUs, OR OTHER DOCUMENTS OBLIGATING THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: PROF SERVICES AGREEMENT with GSI Water Solutions for Date: 4-15-2024  
Statement of Purpose: Tech support to water supply and conservation management work group

Department Head Signature: [Signature]

Remarks, if any: \_\_\_\_\_

City Attorney Review and Signature: See Attached Email Date: \_\_\_\_\_

Other Signatures as Requested by the City Attorney: \_\_\_\_\_

						Name/Position
	Signature					Date: _____
Budget Confirmed:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>			
Certificate of Insurance Attached:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>			
City Council Approval Needed:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>			Date: <u>4-1-2024</u>	

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 4-29-24

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Date posted on website: \_\_\_\_\_

## Erik Glover

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**From:** David Allen  
**Sent:** Monday, April 15, 2024 6:51 AM  
**To:** Erik Glover; Spencer Nebel  
**Cc:** Melanie Nelson  
**Subject:** Re: GSI Agreement for Water Supply Work Group Support  
**Attachments:** Newport\_WG-tech support\_proposal\_03-18-2024.pdf; Newport\_WG-tech support\_PSA\_03-18-2024.pdf; Request for Informal Proposals - Water Conservation Work Group.docx; GSI Water Solutions - Professional Services Agreement - final draft 4-15-24.doc

Attached for signature is final draft of agreement. Also attached are the two GSI attachments from below (i.e., proposal and draft PSA) and the RFP from an earlier e-mail. The draft PSA will not be used, and both the RFP and proposal are Exhibit C to the agreement. The GSI rate/fee schedule is still needed for Exhibit A to the agreement. --David

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**From:** David Allen  
**Sent:** Wednesday, April 10, 2024 5:26 PM  
**To:** Erik Glover  
**Cc:** Spencer Nebel  
**Subject:** Re: GSI Agreement for Water Supply Work Group Support

This is the first I've seen of the attached draft agreement with March 18 proposal/scope of services, although I saw the request for informal proposals you had prepared three weeks ago (March 20 e-mail below). I'm currently working on other items right now and will eventually get to this before next Monday, so it can be reviewed/signed by the city and GSI on Monday, at the latest. --David

\* \* \* \* \*

**CITY OF NEWPORT, OREGON  
PROFESSIONAL SERVICES AGREEMENT**

**Technical Support for Water Supply and  
Conservation Management Work Group**

**THIS AGREEMENT** is between City of Newport, an Oregon municipal corporation (City), and GSI Water Solutions, Inc., a Water Resources Consultant firm.

**RECITALS**

- A. Pursuant to public contracting rule 137-048-0200, the City of Newport (City) may enter into a Contract directly for professional Consulting (including any associated engineering) services to assist the City in Technical Support for Water Supply and Conservation Management.
- B. The Estimated Fee to be paid under the Contract does not exceed \$100,000, allowing the City to select GSI Water Solutions, Inc. (Consultant) to provide the proposed services.
- C. Consultant is willing and qualified to perform such services.

**TERMS OF AGREEMENT**

**1. Consultant's Scope of Services**

Consultant shall perform professional Consulting services related to Technical Support for Water Supply and Conservation Management. The City is free to utilize other Consultants or consultant as it deems appropriate.

**2. Effective Date and Duration**

This agreement is effective on execution by both parties and shall expire, unless otherwise terminated or extended, after three years. The parties may extend the term by mutual agreement.

**3. Consultant's Fee and Schedules**

**A. Fee**

Fees for services under this Agreement shall be based on time and materials and pursuant to the rates shown in Exhibit A, up to a maximum amount payable of \$17,750. Consultant may increase the rates shown in Exhibit A on an annual basis, subject to the written approval of the City. Consultant will alert the City when Consultant is increasing its fees. Consultant will bill for progress payments on a monthly basis. In order to determine the maximum monetary limit for each task, Consultant will submit a schedule and a labor hour estimate based on the rates shown in Exhibit A. Consultant will invoice monthly progress payments based on actual time worked on the project. The maximum monetary limit will not be exceeded without prior written approval by the City. Projects partially completed may be paid for in proportion to the degree of completion.

Consultant will be reimbursed for direct charges such as the cost of printing, postage, delivery services, and subconsultant fees. Unless specifically noted in the Task Order, direct charges will be billed at cost without any markup. Office expenses such as computer cost, telephone calls, and overhead expenses are incidental and are included in the hourly rates shown in Exhibit A.

**B. Payment Schedule for Basic Fee**

Payments shall be made within 30 days of receipt of monthly billings based on the work completed. Payment by the City shall release the City from any further obligation for payment to the Consultant for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

**C. Payment for Contingency Tasks**

When agreed to in writing by the City, the Consultant shall provide services described as Contingency Tasks in a Task Order.

**D. Certified Cost Records**

Consultant shall furnish certified cost records for all billings to substantiate all charges. Consultant's accounts shall be subject to audit by the City. Consultant shall submit billings in a form satisfactory to the City. At a minimum, each billing shall identify the Task Order under such work is performed, work completed during the billing period, percentage of work completed to date, and percentage of budget used to date for each task.

**E. Identification**

Consultant shall furnish to the City its employer identification number.

**F. Payment – General**

- 1)** Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 2)** Consultant shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime. Any subcontractors utilized by Consultant under this Agreement will be paid according to the then prevailing wage.
- 3)** Consultant shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Consultant or all sums which Consultant agrees to pay for such services and all moneys and sums which Consultant collected or deducted from the wages of

employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

- 4) Consultant shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.
- 5) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to Consultant, sub-consultant or subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due to the Consultant. The payment of the claim in this manner shall not relieve Consultant or its surety from obligation with respect to any unpaid claims.

**G. Schedule**

Consultant shall provide services under this Agreement in accordance with the Project Schedule.

**4. Ownership of Plans and Documents: Records; Confidentiality**

**A. Definitions.** As used in this Agreement, the following terms have the meanings set forth below:

- 1) Consultant Intellectual Property means any intellectual property owned by Consultant and developed independently from this Agreement that is applicable to the Services or included in the Work Product.
- 2) Third Party Intellectual Property means any intellectual property owned by parties other than City or Consultant that is applicable to the Services or included in the Work Product.
- 3) Work Product means the Services Consultant delivers or is required to deliver to City under this Agreement. Work Product includes every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports and other materials, whether completed, partially completed or in draft form.

**B. Work Product**

- 1) Except as provided elsewhere in this Agreement, all Work Product created by Consultant pursuant to this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire" or an employment to invent, shall be the exclusive property of City. City and Consultant agree that such original works of authorship are "work made for hire" of which City is the author within the meaning of the United States Copyright Act. To the extent that City is not the owner of the intellectual

property rights in such Work Product, Consultant hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in City. Consultant forever waives any and all rights relating to original Work Product created pursuant to this Agreement, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

- 2)** In the event Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grants to City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use Consultant Intellectual Property, including the right of City to authorize contractors, Consultants and others to use Consultant Intellectual Property, for the purposes described in this Agreement.
- 3)** In the event Third Party Intellectual Property is necessary for the use of any Work Product, Consultant shall secure on City's behalf and in the name of City, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third-Party Intellectual Property, including the right of City to authorize contractors, Consultants and others to use the Third-Party Intellectual Property, for the purposes described in this Contract.
- 4)** In the event Work Product created by Consultant under this Agreement is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, including the right of City to authorize contractors, Consultants and others to use the pre-existing elements of Consultant Intellectual Property employed in a Work Product, for the purposes described in this Agreement.
- 5)** In the event Work Product created by Consultant under this Agreement is a derivative work based on Third Party Intellectual Property, or a compilation that includes Third Party Intellectual Property, Consultant shall secure on City's behalf and in the name of City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property, including the right to authorize contractors, Consultants and others to use the pre-existing elements of the Third Party Intellectual Property, for the purposes described in this Agreement.
- 6)** To the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, Consultant shall be indemnified and held harmless by City from liability arising out of re-use or alteration of the Work Product by City which was

not specifically contemplated and agreed to by the Parties in this Agreement.

- 7) Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless otherwise specified, Consultant may use standard line drawings, specifications and calculations on other, unrelated projects.

**C. Confidential Information**

- 1) Consultant acknowledges that it or its employees, Sub-Consultants, subcontractors or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is the confidential information of City or City's residents. Any and all information provided by City and marked confidential, or identified as confidential in a separate writing, that becomes available to Consultant or its employees, Sub-Consultants, subcontractors or agents in the performance of this Agreement shall be deemed to be confidential information of City ("Confidential Information"). Any reports or other documents or items, including software, that result from Consultant's use of the Confidential Information and any Work Product that City designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Consultant) publicly known; (b) is furnished by City to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (d) is obtained from a source other than City without the obligation of confidentiality; (e) is disclosed with the written consent of City; or (f) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information; or (g) is required to be disclosed by law, subpoena, or other court order.
- 2) Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to City under this Agreement, and to advise each of its employees, Sub-Consultants, subcontractors and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist City in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise City immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with City in seeking injunctive or other equitable relief in the name of City or Consultant against any such person. Consultant agrees that, except as directed by City, Consultant will not at any time during or after the term of this

Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Agreement, and that upon termination of this Agreement or at City's request, Consultant will turn over to City all documents, papers, and other matter in Consultant's possession that embody Confidential Information.

- 3) Consultant acknowledges that breach of this Section 4, including disclosure of any Confidential Information, will give rise to irreparable injury to City that is inadequately compensable in damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of this Section 4, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of City and are reasonable in scope and content.

## **5. Assignment/Delegation**

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other. If City agrees to assignment of tasks to a subcontractor, Consultant shall be fully responsible for the acts or omissions of any subcontractors. Any approval of a subcontractor does not create a contractual relationship between the subcontractor and City.

## **6. Consultant is Independent Contractor**

- A. The City's project director, or designee, shall be responsible for determining whether Consultant's work product is satisfactory and consistent with this Agreement, but Consultant is not subject to the direction and control of the City. Consultant shall be an independent contractor for all purposes and shall not be entitled to compensation other than the compensation provided for under Section 3 of this Agreement. The City's acceptance of the work product as satisfactory does not relieve the Consultant from responsibility for any errors in the work product.
- B. Consultant is an independent contractor and not an employee of City. Consultant acknowledges Consultant's status as an independent contractor and acknowledges that Consultant is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Consultant to provide services under this Agreement are employees of Consultant and not of City. Consultant acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Consultant is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Consultant under the terms of the Agreement, to the full extent of any benefits or other remuneration Consultant receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make as a result of the finding.
- C. The Consultant represents that no employee of the City or any partnership or



corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Consultant, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

- D.** Consultant and its employees, if any, are not active members of the Oregon Public Employees Retirement System.
- E.** Consultant certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- F.** Consultant is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

## **7. Indemnity**

- A.** The City has relied upon the professional ability and training of the Consultant as a material inducement to enter into this Agreement. Consultant represents to the City that the work under this Agreement will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the Civil Engineering profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of an Consultant's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Consultant of any responsibility for design deficiencies, errors or omissions.
- B.** Consultant shall defend, hold harmless and indemnify the City, its officers, agents, and employees from all claims, suits, or actions to the extent caused by the alleged negligent or otherwise wrongful acts or omissions of Consultant or its subcontractors, sub-Consultants, agents or employees under this Agreement. This indemnification does not extend to indemnification for negligent or otherwise wrongful acts or omissions of the City. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.
- C.** Consultant shall defend, hold harmless and indemnify the City, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, to the extent caused by the professional negligent acts, errors or omissions of Consultant or its subcontractors, sub-Consultants, agents or employees in performance of professional services under this Agreement. Any design work by Consultant that results in a design of a facility that does not comply with applicable laws including accessibility for persons with disabilities shall be considered a professionally negligent act, error or omission.
- D.** As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly or indirectly, in whole or in part, from the quality of the professional services provided by Consultant, regardless of the type of claim made against the City. A claim for other than

professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Consultant unrelated to the quality of professional services provided by Consultant.

## **8. Insurance**

Consultant and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement as detailed in this section. The insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Consultant and its subcontractors shall provide at least the following limits and coverages:

### **A. Commercial General Liability Insurance**

Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form with policy limits of at least per occurrence. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement in an amount of \$2,000,000.

### **B. Professional Liability**

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per claim shall not be less than \$1,300,000, or the equivalent. Annual aggregate limit shall not be less than \$2,000,000 and filed on a "claims-made" form.

### **C. Commercial Automobile Insurance**

Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,300,000.

### **D. Workers' Compensation Insurance**

The Consultant, its subcontractors, if any, and all employers providing work, labor or materials under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage.

### **E. Additional Insured Provision**

The Commercial General Liability Insurance Policy shall include the City its officers, directors, and employees as additional insureds with respect to this Agreement. Coverage will be

endorsed to provide a per project aggregate.

**F. Extended Reporting Coverage**

If any of the liability insurance is arranged on a "claims made" basis, Extended Reporting coverage will be required at the completion of this Agreement to a duration of 24 months or the maximum time period the Consultant's insurer will provide if less than 24 months. Consultant will be responsible for furnishing certification of Extended Reporting coverage as described or continuous "claims made" liability coverage for 24 months following Agreement completion. Continuous "claims made" coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this Agreement. Coverage will be endorsed to provide a per project aggregate.

**G. Notice of Cancellation**

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days' written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days' notice of cancellation provision shall be physically endorsed on to the policy.

**H. Insurance Carrier Rating**

Coverage provided by the Consultant must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

**I. Certificates of Insurance**

As evidence of the insurance coverage required by the Agreement, the Consultant shall furnish a Certificate of Insurance to the City. No Agreement shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the address below ten days prior to coverage expiration.

**J. Primary Coverage Clarification**

The parties agree that Consultant's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

**K. Copy of Policy or Certificate of Insurance**

A cross-liability clause or separation of insureds clause will be included in the general liability policy required by this Agreement. Consultant shall furnish City with at least 30-days written notice of cancellation of, or any modification to, the required insurance coverages. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

City Recorder  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365

Thirty days' cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance. The procuring of the required insurance shall not be construed to limit Consultant's liability under this agreement. The insurance does not relieve Consultant's obligation for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement.

**9. Termination Without Cause**

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Consultant. If City terminates the Agreement pursuant to this section, Consultant shall be entitled to payment for services provided prior to the termination date.

**10. Termination with Cause**

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

- 1)** If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2)** If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3)** If any license or certificate required by law or regulation to be held by Consultant, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

Any termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**B.** City, by written notice of default (including breach of Agreement) to Consultant, may terminate this Agreement:

- 1)** If Consultant fails to provide services called for by this Agreement within the time specified, or
- 2)** If Consultant fails to perform any of the other provisions of this Agreement, or fails to pursue the work as to endanger performance of this Agreement in

accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.

- C. If City terminates this Agreement, it shall pay Consultant for all undisputed invoices tendered for services provided prior to the date of termination.
- D. Damages for breach of Agreement shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

**11. Non-Waiver**

The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

**12. Notice**

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

IF TO CITY OF NEWPORT

Erik Glover  
Assistant City Manager/City Recorder  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365  
(541) 574-0613  
[e.glover@newportoregon.gov](mailto:e.glover@newportoregon.gov)

IF TO CONSULTANT

Suzanne de Szoeki  
Water Resources Consultant  
GSI Water Solutions, Inc.  
1600 SW Western Blvd., Suite 240  
Corvallis, OR 97333  
(541) 257-9006  
[sdeszoeki@gsiws.com](mailto:sdeszoeki@gsiws.com)

The date of deposit in the mail shall be the notice date for first class mail. All other notices, bills and payments shall be effective at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

**13. Merger**

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

**14. Force Majeure**

Neither City nor Consultant shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil

unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractors or supplies due to such cause; provided that the parties so disabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

#### **15. Non-Discrimination**

Consultant agrees to comply with all applicable requirements of federal and state statutes, rules, and regulations. By way of example only, Consultant also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

#### **16. Errors**

Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

#### **17. Extra Work**

Extra work or work on Contingency Tasks is not authorized unless the City authorizes the additional or contingency work in writing. Failure of Consultant to secure written authorization for extra work shall constitute a waiver of all right to adjustment in the Agreement price or Agreement time due to unauthorized extra work and Consultant shall be entitled to no compensation for the performance of any extra work not authorized in writing.

#### **18. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon, and the parties hereby consent to venue in Lincoln County Circuit Court, Oregon, unless exclusive jurisdiction is in federal court, in which case venue shall be in federal district court for the District of Oregon.

#### **19. Compliance with Applicable Law**

Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including but not limited to those set forth in ORS 279A, 279B and 279C. While all required contractual provisions are included in Exhibit B, Consultant shall be familiar with and responsible for compliance with all other applicable provisions of the Oregon Public Contracting Code.

#### **20. Conflict Between Terms**

This document shall control in the event of any conflict in terms between this document and the RFP and/or proposal.

**21. Access to Records**

City shall have access to the books, documents, papers and records of Consultant that are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

**22. Audit**

Consultant shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the Agreement period. Consultant agrees to permit City or its duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

**23. Severability**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the Agreement.

**24. Industrial Accident Fund Payment**

Consultant shall pay all contributions or amount due the Industrial Accident Fund that Consultant or subcontractors incur during the performance of this Agreement.

**25. Arbitration**

All claims, disputes, and other matters in question between the City and Consultant arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance with the Oregon Uniform Arbitration Act, ORS 36.600, et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Lincoln County Circuit Court will establish rules to govern the arbitration.

A claim by Consultant arising out of, or relating to this Contract must be made in writing and delivered to the City Administrator not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the City Administrator within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the City Administrator will be considered by the City Board at the Board's next regularly scheduled meeting. At that meeting the Board will render a written decision approving or denying the claim. If the claim is denied by the Board, the Consultant may file a written request for arbitration with the City Administrator. No demand for arbitration shall be effective until the City Board has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the City has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the City Board's decision being binding upon the City and Consultant.

Notice of demand for arbitration shall be filed in writing with the other party to the agreement, subject to applicable statutes of limitation, except as set forth above. The City, if not the party demanding

arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the Consultant to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

## **26. Attorney Fees**

If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this contract without initiating litigation, Consultant agrees to pay City's attorney fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party

## **27. Complete Agreement**

This Agreement and any exhibit(s) hereto and any and all Task Orders executed by the parties constitute the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Any waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. In the event of a conflict between the documents comprising this Agreement, interpretation shall occur in the following manner: 1) each individual Task Order; 2) this Agreement and any exhibits hereto; and 3) the RFP and Response. The following exhibits are attached to and incorporated into this Agreement:

- A. Exhibit A – Consultant's Fee Schedule
- B. Exhibit B – Oregon Public Contracting Code/required contractual provisions
- C. Exhibit C – RFP and Consultant's Proposal

## **28. Miscellaneous**

- A. Consultant agrees that news releases and other publicity relating to the subject of this Agreement will be made only with the prior written consent of City.
- B. Consultant shall comply with all virus-protection, access control, back-up, password, and other security and other information technology policies of City when using, having access to, or creating systems for any of City's computers, data, systems, personnel, or other information resources.
- C. Consultant will include in all contracts with subcontractors' appropriate provisions as required by ORS 279C.580.
- D. Consultant will comply with environmental and natural resources regulations as set forth in ORS 279B.225 and regulations relating to the salvaging, recycling, composting or mulching yard waste material, and salvage and recycling of construction and demolition debris as set forth in ORS 279B.225 and 279C.510.



**By their signatures hereunder, the parties acknowledge they have read and understand this Agreement and agree to be bound by its terms. This Agreement is effective on the date last signed below by a party below:**

**CITY OF NEWPORT:**

**GSI WATER SOLUTIONS, INC.:**

\_\_\_\_\_  
Spencer R. Nebel, City Manager

By: \_\_\_\_\_

Date: \_\_\_\_\_


Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**CONSULTANT'S FEE SCHEDULE**

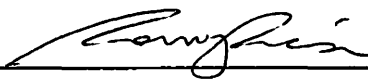
By their signatures hereunder, the parties acknowledge they have read and understand this Agreement and agree to be bound by its terms. This Agreement is effective on the date last signed below by a party below:

CITY OF NEWPORT:

  
\_\_\_\_\_  
Spencer R. Nebel, City Manager

Date: 04/29/24

GSI WATER SOLUTIONS, INC.:

By:   
\_\_\_\_\_

Its: Ronan Igloria, Principal

Date: 04/25/2024

**EXHIBIT B**  
**Oregon Public Contracting Requirements**  
**ORS CHAPTERS 279B AND 279C REQUIREMENTS**

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1); 279C.505(1)(a)
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2); 279C.505(1)(b)
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3); 279C.505(1)(c)
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. ORS 279B.220(4); 279C.505(1)(d)
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid. ORS 279C.515
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1); 279C.530(1)
- (7) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2); 279C.530(2)
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq). ORS 279B.235(3); 279C.520(3)
- (9) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that

the employees may be required to work. ORS 279B.235(2); 279C.520(2)

- (10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430
- (11) The contract may be canceled at the election of City for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- (12) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (13) Contractor certifies that it has not discriminated against minorities, women, service-disabled veterans, or emerging small business or disadvantaged business enterprises in obtaining any required subcontractors. ORS 279A.110
- (14) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120
- (15) If the contract price exceeds \$50,000 and this contract is not otherwise exempt, workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840. The applicable prevailing rate of wage may be accessed online at: <https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>. ORS 279C.830
- (16) If the project is subject to both the Davis-Bacon Act and state prevailing rate of wage, Contractor and every subcontractor shall pay workers not less than the higher of the applicable state or federal prevailing rate of wage. ORS 279C.830
- (17) Contractor and every subcontractor must have a public works bond filed with the Oregon Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). ORS 279C.830

**EXHIBIT C**  
**RFP and Consultant's Proposal**

# Exhibit A



## Scope of Work and Fee Estimate

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**To:** Erik Glover, City of Newport

**From:** Ronan Igloria, GSI Water Solutions, Inc.  
Suzanne de Szoeka, GSI Water Solutions, Inc.

**Date:** March 18, 2024

**RE:** Technical Support for the Water Supply and Conservation Management Work Group

---

GSI Water Solutions, Inc. (GSI) is excited to submit this proposal to provide technical support to the City of Newport's (City) Water Supply and Conservation Management Work Group (Work Group). Our recent project work demonstrates our facilitation skills, understanding of water conservation issues, and experience with water supply and conservation planning, and we look forward to using this skill set to help the City meet its goals for the Work Group.

## Similar Services Provided

The work requested by the City requires experience facilitating water resources planning efforts, including water conservation planning, and strategizing with a wide range of stakeholders.

Water supply and conservation planning is a key part of the services that GSI offers. GSI has developed dozens of Water Management and Conservation Plans (WMCPs) for clients located throughout Oregon (e.g., Seal Rock Water District and City of Waldport). As the name implies, major elements of WMCPs include water supply and conservation planning. During WMCP development, we typically facilitate work groups comprised of water providers' staff and, in some cases, stakeholders from the community (e.g. City of Ashland). Through the use of work groups, we help clients identify, evaluate, and select best-fit conservation measures, policies, and strategies. Our extensive knowledge of conservation program development and implementation, coupled with our ability to build consensus among work group members, result in tailor-made conservation solutions that address the specific needs of our clients.

GSI has a deep understanding of the conservation program needs of Mid-Coast communities due to its role assisting the Mid-Coast Water Conservation Consortium (Mid-Coast Water). Mid-Coast Water is made up of water providers on the Mid-Coast, including the City, working to promote water conservation and resiliency (Seal Rock Water District is the fiscal agent). GSI's work has included facilitating monthly meetings to discuss and strategize Mid-Coast Water activities, developing conservation outreach and education materials, and researching and purchasing water conservation items to provide to water customers.

GSI has facilitated teams that guide the development of Drinking Water Protection Plans (e.g., City of Lincoln City, City of Toledo, and City of Yachats), which has involved documenting team member input, researching topics for team consideration, and helping the team come to agreement about risks in the source water area, strategies to address those risks, and an implementation plan for the strategies.

In addition, GSI has facilitated Mid-Coast Water Planning Partnership (Partnership) meetings and activities since early 2023. In this role, we have helped the Partnership prioritize actions in its Water Action Plan and initiate implementation steps for those actions. This effort has included facilitating monthly Work Group meetings and the biannual Partnership meetings. GSI has helped diverse stakeholders discuss complex issues, reach

agreement on topics, and strategize next steps in planning. GSI has conducted research, synthesized information, and developed approaches and strategies to support meeting discussions and to advance the Partnership's efforts. Seal Rock Water District is the Partnership's fiscal agent and a convener.

Along with facilitation skills, GSI brings a strong understanding of the City's water supply. GSI has worked with the City since 2013 to protect and secure its water rights for its primary sources of supply, Big Creek and the Siletz River, and has helped the City complete numerous water rights transactions to that end.

GSI is eager to bring its facilitation experience and water supply and conservation knowledge to this Work Group to help guide City water resources planning.

## List of References

Client	Contact Information
Seal Rock Water District	Adam Denlinger, General Manager ▪ <a href="mailto:adenlinger@srwd.org">adenlinger@srwd.org</a> ▪ 541.563.4447
City of Lincoln City	Stephanie Reid, City Engineer ▪ <a href="mailto:sreid@lincolncity.org">sreid@lincolncity.org</a> ▪ 541.996.1236
City of Ashland	Scott Fleury, Public Works Director ▪ <a href="mailto:Scott.fleury@ashland.or.us">Scott.fleury@ashland.or.us</a> ▪ 541-552-2412

## Services To Support the Work Group

The Work Group was established to produce a technical memorandum outlining recommendations to City administration on water management and conservation strategies and technologies, watershed condition and production, potential conservation policies and practices, and water supply infrastructure condition and capacity. GSI will support this goal by summarizing Work Group issues addressed to date, providing water conservation concepts, facilitating meetings and gaining consensus among Work Group members, drafting a technical memorandum based on Work Group recommendations for Work Group review, and providing a final technical memorandum to the Work Group by December 1, 2024. Meeting facilitation will occur monthly from April 2024 through November 2024, with eight 2-hour meetings. At least one meeting will be conducted by GSI in-person and the remainder virtually.

## Technical Support Costs

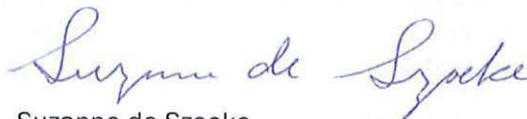
GSI will conduct this work based on time and materials. The estimated budget for this project is \$17,750. The overall budget will not be exceeded without prior authorization from the City of Newport. GSI's 2024 billing rates for key staff are: Suzanne de Szoeki (\$195); Tim Henkle (\$190); and Mikaela Clark (\$120). GSI will provide our detailed Rate Schedule if selected.

We thank you for your consideration of this proposal and look forward to supporting the City and Work Group.

Sincerely,  
GSI Water Solutions, Inc.



Ronan Igloria, PE, CWRE  
Principal Water Resources Consultant



Suzanne de Szoeki  
Supervising Water Resources Consultant





## PROFESSIONAL SERVICES AGREEMENT

<b>Client:</b>	City of Newport
<b>Project:</b>	Water Supply and Conservation Management Work Group Technical Support
<b>Proposal Date:</b>	Mar. 18, 2024
<b>Not-to-Exceed Amount:</b>	\$17,750

City of Newport (CLIENT) authorizes Groundwater Solutions, Inc., dba GSI Water Solutions, Inc. (GSI), to perform the following services on the PROJECT:

### Scope of Services

The attached proposal to CLIENT dated Mar. 18, 2024, presents the scope of work for this project.

### Compensation

The scope of work outlined in the proposal to CLIENT dated Mar. 18, 2024, will be completed on a time-and-materials basis in accordance with the attached schedule of rates, billed as provided herein. GSI has provided you with a good faith estimate that the work should not exceed \$17,750. GSI reserves the right to adjust this amount in the event of encountering unforeseen issues relating to the project, which may arise during the time of the contract. In the event GSI must adjust cost, it will contact CLIENT at its earliest convenience to discuss adjustment of the total cost of the project. The total cost then will be subject to mutual Agreement of the parties.

### Schedule

GSI will proceed with the work in a professional and expeditious manner, unless delayed by the unforeseen unavailability of necessary labor, restricted access to the work site, discovery in handling of toxic materials, delays in communications with CLIENT, insufficient or unworkable drawings or specifications, changes in the work, or any other causes beyond GSI's control. While GSI shall, at all times, conscientiously proceed with the work, the estimated time to complete this project as outlined in the proposal to CLIENT dated Mar. 18, 2024, is only for the benefit of CLIENT's general planning. The actual completion time is subject to factors listed above. GSI will not be responsible for any financing costs or other consequential damages or costs incurred by CLIENT due to delays in the completion of the project.

### Terms

Services covered by this Agreement will be performed in accordance with the attached provisions and schedules. This Agreement supersedes all prior Agreements and understandings and may be changed only by written amendment executed by both parties.

**GSI WATER SOLUTIONS, INC.**

**City of Newport**

Signature:

Signature:

Name (printed):

Name (printed):

Title:

Title:

Date:

Date:

## Provisions

### Authorization to Proceed

Execution of this Agreement by CLIENT will be authorization for GSI to proceed with the services, unless otherwise provided for in this Agreement.

### Compensation Rates

Compensation for services provided under this agreement will be on a time and materials basis in accordance with the rates contained in the Attachment. The hourly labor rates shown in the Attachment are subject to annual adjustments effective each anniversary of the contract signing date.

### Subcontracts and Direct Expenses

When services are performed on a cost reimbursement basis, a markup of 10 percent will be applied to subcontracts and outside services and a markup of 10 percent will be applied to Direct Expenses. For purposes of this Agreement, Direct Expenses are defined to include those necessary costs and charges incurred for the project including, but not limited to, the direct costs of transportation, meals, lodging, mail, shipping, equipment, supplies, laboratory test and analysis, printing and reproduction services, and certain field equipment.

All sales, use, value added, business transfer, gross receipts, or other similar taxes will be added to GSI compensation when invoicing CLIENT.

### Ownership of Documents

CLIENT agrees that all original documents produced by GSI in accordance with this agreement, except documents which are required to be filed with public agencies, shall remain the property of GSI. CLIENT agrees to waive any claim against GSI and to indemnify, defend, and hold harmless GSI for any and all claims arising out of any use, not authorized in writing by GSI, of these documents by third parties not related to this Agreement.

### Cost Opinions

Any cost opinions or project economic evaluations provided by GSI will be on a basis of experience and judgment, but, because GSI has no control over market conditions or bidding procedures, GSI cannot warrant that bids, ultimate construction cost, or project economics will not vary from these opinions.

### Payment to GSI

Monthly invoices will be issued by GSI for all services performed under this Agreement. CLIENT shall pay each invoice within 30 days.

In the event of a disputed billing, only that disputed portion will be withheld from payment, and the undisputed portion will be paid. CLIENT will exercise reasonableness in disputing any bill or portion thereof.

### Insurance

GSI will maintain throughout this Agreement the following insurance:

- a. Worker's compensation insurance in the statutory amount of not less than \$1,000,000 for all employees engaged in the work. Owners of GSI who are exempt from worker's compensation requirements shall maintain equivalent disability insurance.
- b. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- c. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of GSI or of any of its

employees, agents, or subcontractors, with \$2,000,000 per occurrence and \$2,000,000 in the aggregate.

- d. Professional liability insurance of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

Insurance coverage in (b) and (c) above will name CLIENT as additional insured. Such insurance will be the primary coverage to GSI and CLIENT.

Before commencing work under this contract, GSI will furnish CLIENT with certificates of insurance verifying coverages and additional insureds. Certificates also will state that the insurance carrier will give CLIENT a 30-day notice of any insurance cancellation or material alteration.

#### **Standard of Care**

GSI will complete its services with the standard of care and degree of skill and diligence normally employed by professionals performing the same or similar services in the locality in which the services are performed.

#### **Indemnification**

GSI agrees, to the fullest extent permitted by law, to indemnify and hold harmless CLIENT from damages, liabilities, and costs to the extent such liabilities, and costs are caused by GSI's negligent acts, errors, or omissions in the performance of professional services under this agreement, or anyone for whom GSI is legally liable.

CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless GSI from damages, liabilities, and costs to the extent such liabilities, and costs are caused by CLIENT's acts, errors, or omissions, or anyone for whom CLIENT is legally liable.

In the event that damages, liabilities, and costs are caused by the joint or concurrent negligence of CLIENT and GSI, they shall be borne by each party in proportion to its own negligence. This provision is intended to indemnify and hold harmless each other and each other's clients specifically in any situation in which employees, agents, and representatives commence a third party action for injuries or death otherwise covered by applicable workers' compensation laws.

#### **Limitation of Liability**

GSI's liability will, in the aggregate, not exceed \$100,000. This provision takes precedence over any conflicting provision of this Agreement or any document incorporated into it or referenced by it.

This limitation of liability will apply whether GSI's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, and shall include GSI's officers, employees, and subcontractors.

#### **Severability and Survival**

If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the other provisions shall remain in full effect. Limitations of liability shall survive termination of this Agreement for any cause.

#### **No Third-Party Beneficiaries**

This Agreement gives no rights or benefits to anyone other than CLIENT and GSI and has no third-party beneficiaries except as provided in **Limitation of Liability**.

#### **Materials and Samples**

Any items, substances, materials, or samples removed from the project site for testing, analysis, or other evaluation will be returned to the project site unless agreed to otherwise. CLIENT recognizes and agrees that GSI at no time assumes title to said items, substances, materials, or samples. CLIENT recognizes that GSI assumes no risk and/or liability for a waste or hazardous waste site originated by other than GSI.

### **Assignments**

Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable.

### **Integration**

This Agreement incorporates all previous communications and negotiations and constitutes the entire Agreement of the parties. If CLIENT issues a Purchase Order in conjunction with performance of the services, general or standard terms and conditions on the Purchase Order do not apply to this Agreement.

### **Force Majeure**

If performance of the services is affected by causes beyond GSI's reasonable control, project schedule and compensation shall be equitably adjusted.

### **Changes**

CLIENT may make or approve changes within the general Scope of Services in this Agreement, subject to GSI approval and with appropriate adjustment for costs and time for performance. If such changes affect GSI's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this Agreement.

### **Termination**

This Agreement may be terminated for convenience on 30 days' written notice or if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within 5 days of written notice and diligently complete the correction thereafter. The preceding sentence does not apply to a non-payment for services rendered, at which time, CLIENT shall be deemed to be in default and GSI may suspend services. On termination, GSI will be paid for all authorized work performed up to the termination date plus termination expenses, such as, but not limited to, reassignment of personnel, subcontract termination costs, and related closeout costs.

### **Attorney's Fees**

In case this Agreement is referred to an attorney for collection, suit, or action, including arbitration, by any of the parties to enforce any provision of this Agreement, the prevailing party shall be entitled to, in addition to any award of costs or disbursements provided by statute, such additional sums as the court may adjudge reasonable as attorney's fees and costs to be allowed in such suit or action, including sums allowed as reasonable attorney's fees and costs on any appeal of such suit or action.

### **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon and venue of any action shall be in Multnomah County, Oregon.



## 2024 GSI Fee Schedule

Labor Category	Hourly Rate
<b>Technical Professionals</b>	
Principal	\$200 - \$280
Supervising	\$190 - \$235
Managing	\$170 - \$200
Consulting	\$150 - \$185
Project	\$135 - \$165
Staff	\$110 - \$150
<b>Other Services</b>	
GIS/Graphics/Database	\$120 - \$175
Editor/Documents	\$120 - \$145
Administration	\$85 - \$120

The hourly rate for trial preparation and expert witness testimony is 1.5 times the standard billing rate shown above.

### Expenses

- **Mileage:** IRS authorized rate/mile plus 10 percent markup
- **Direct expenses and outside services:** Cost plus 10 percent markup
- **Enterprise GIS:** \$100 per month for the duration of use

03/05/24

## City of Newport, Oregon

### Request for Informal Proposals to Provide Technical Support to the Water Supply and Conservation Management Work Group

#### Background Information:

The City Council appointed a Water Supply and Conservation Work Group to identify and address water conservation issues for the City of Newport. Resolution No. 4008 provides:

***Work Group Responsibilities.*** *The Water Supply Management and Conservation Work Group shall have the following powers, duties, and functions:*

*Collect and evaluate information, provide recommendations to city administration on water management and conservation strategies and technologies, watershed condition and production, potential water conservation policies and practices, and water supply infrastructure condition and capacity.*

The Work Group first met November 17, 2022 and has met sporadically since that time. The efforts of the work group have been limited with extended vacancies in a number of key city staff positions including Public Works Director and City Engineer since this committee was established. As a result, on January 29, 2024 the City Council approved Resolution No. 4008 which extended the time for the work group to finalize its plans through December 31, 2024. A link to the agenda packets and meetings for the work group can be found at <https://www.newportoregon.gov/citygov/generalpublicmeetings.asp>.

Since the City of Newport continues to deal with staff shortages in key positions relating to this work, proposals are being requested for technical staff support for the Work Group and City Staff to complete the tasks outlined in Resolution No. 4008.

The City has sought proposals and will be initiating a water master plan update. As part of the RFP for this work, the consultants conducting the water master plan will be utilizing the technical memorandum as a basis for the water conservation section of the master plan.

The Water Supply and Conservation Work Group is a committee subject to public meeting requirements. The City will maintain responsibility for public notices, agendas, minutes and other typical responsibilities necessary to support a public body. The Assistant City Manager/City Recorder will serve as a staff liaison with the work group and consultant to coordinate necessary information from City staff. Meetings will be held in the Council Chambers currently scheduled for the third Tuesday of each month.

Also, please note that the City has not budgeted for this expenditure in the current fiscal year. It is the city's intent to use unexpended payroll from vacancies that currently exist to fund this expense. Please keep in mind that funding is limited for these services in developing your proposal.

**Support requested:**

- 1) Review agendas, minutes and reports of the Water Supply and Conservation Work Group
- 2) Compile a list of issues discussed by the work group to date
- 3) Participate in meetings of the Work Group
- 4) Provide concepts to the work group relating to water conservation
- 5) Facilitate a consensus of the work group about key strategies to recommend to the City Council to address water conservation
- 6) Develop a technical memorandum outlining specific recommendations of the Water Supply and Conservation Work Group for the City Council and following City Council acceptance to be further developed as part of the water master plan for approval of the work group by December 1, 2024

**Submission of RFP:**

Informal proposals are requested. Please keep proposals to two pages in length.

- 1) Provide a description of similar services that you have provided
- 2) Provide a list of references (Minimum of three)
- 3) Describe the services that you would be able to provide to the work group to support
- 4) Provide a cost for the technical support requested. Also, provide an hourly rate if additional services are requested during the term of the agreement
- 5) Be available via Zoom for questions and brief presentation at 2:00pm on Tuesday March 19 with the Water Conservation Work Group

Please submit any proposals outlining the above items to Erik Glover, Assistant City Manager at [E.Glover@Newportoregon.gov](mailto:E.Glover@Newportoregon.gov) by Monday March 18 at 2:00 pm