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**CITY OF NEWPORT, OREGON
GOODS AND SERVICES AGREEMENT
NEWPORT MUNICIPAL AIRPORT FILL PROJECT (2011-026)**

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and **Ward Northwest, Inc.** (Contractor). This Agreement shall be effective on the date last signed by a party below (Effective Date).

RECITALS

- A. Contractor represents it has the training, ability, knowledge, and experience to provide services desired by the City; and
- B. City selected Contractor to provide services, consistent with its public contracting rules.

1. SERVICES TO BE PROVIDED

- A. Contractor will provide the services described in Exhibit A (hereinafter "Services").
- B. In the course of providing Services under this Agreement, Contractor may have contact with the public. Contractor will maintain good relations with the public. The City may treat the failure to maintain good relations with the public as a non-curable breach of this Agreement and may disqualify Contractor from future work for the City.

2. COMPENSATION & TIMEFRAME

Contractor shall be compensated as described in Exhibit A. Unless otherwise set forth in Exhibit A, Contractor shall begin Services on the Effective Date and shall complete Services no later than such date set forth in Exhibit A or as agreed upon in writing by the parties.

3. STATUS OF CONTRACTOR

Contractor certifies that:

- A. Contractor is an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor 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 (to Contractor or to a third party) as a result of the finding.

- B. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.
- C. 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 Contractor, either directly or indirectly, in connection this Agreement, except as specifically declared in writing.
- D. Contractor currently has a City business license or will obtain one prior to delivering Services under this Agreement.

4. WARRANTY & INDEMNIFICATION

- A. City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed with good workmanship and in accordance with generally accepted professional practices and standards of the industry in which Contractor operates as well as the requirements of applicable federal, state and local laws. Contractor's work will conform to the requirements of this Agreement. Acceptance of Contractor's work by City shall not operate as a waiver or release of this warranty.
- B. Contractor is fully liable for the acts and omissions of Contractor and Contractor's subcontractors which cause any damage, injury, death, property damage or loss to any person or property.
- C. Contractor will indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this Agreement. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. 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.

5. INSURANCE

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

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

A. Commercial General Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$1,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Medical Expense (Any one person)	\$5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

C. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either 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 or employers that are exempt under ORS 656.126. 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. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

D. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City as an additional insured with respect to this Agreement.

E. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage of Contractor's insurance without 30 days prior written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days prior notice of cancellation to the City

F. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Contractor shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective 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 City 10 days prior to coverage expiration.

G. Primary Coverage Clarification

The parties agree that Contractor'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.

H. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Agreement.

The procuring of required insurance shall not be construed to limit Contractor's liability under this Agreement.

6. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS

Unless otherwise set forth herein, payment to Contractor shall be made by City within thirty (30) days of receipt of an approved invoice. An approved invoice is an invoice that has been signed by an authorized City individual. Payment may be withheld in the event the Services performed or an invoice submitted is disputed by the City. All notices, bills and payments shall be made in writing and may be given by personal delivery mail. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices and other information:

City: Ted Jones, PE
Senior Project Manager
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
P| 541-574-3375

F| 541-265-3301
E| t.jones@newportoregon.gov

Contractor: Rob Ward
Ward Northwest, Inc.
1732 Laurel Pl, Ste. A
Florence, OR 97439
P| 541-997-9201
E| rob@wardnorthwest.com

Notices mailed to the address provided for notice in this section shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery.

7. 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 Contractor. If City terminates the Agreement pursuant to this Section due to no fault of Contractor, City shall pay Contractor for all approved and undisputed services rendered up to the date of termination.

8. TERMINATION WITH CAUSE

- A. City may modify or terminate this Agreement effective upon delivery of written notice to Contractor, 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.
 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 under this Agreement.
 3. If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the Services required by this Agreement is for any reason denied, revoked, or not renewed.
 4. If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this Agreement under subsection A will be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- B. City, by written notice to Contractor, may terminate the whole or any part of this Agreement:

1. If Contractor fails to provide Services as set forth in this Agreement within the time specified herein or any extension thereof, or
2. If Contractor fails to perform any provisions of this Agreement, or fails to pursue the work of this Agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in this Section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. If City terminates this Agreement under Section, Contractor shall be entitled to receive as full payment for all Services actually satisfactorily rendered and expenses incurred, provided however, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of this Agreement by Contractor.

9. ACCESS TO RECORDS

For a period of not less than three years after City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.

10. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities 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 nature or of a public enemy, civil unrest, earthquake, fire, flood, epidemic, quarantine restriction, strike, freight embargo, unusually severe weather; provided that the parties so disabled shall notify the other party in writing of the cause of delay. Each party shall make reasonable efforts to remove or eliminate the cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the Agreement.

11. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

12. ERRORS

Contractor will perform additional work as may be necessary to correct errors in Services performed under this Agreement without undue delay and without additional cost.

13. GOVERNING LAW

The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement will be brought in the appropriate court of the State of Oregon. In any action arising under this Agreement, the losing party shall pay such sum as the court may adjudge including reasonable attorney fees and court costs.

14. COMPLIANCE WITH LAWS AND RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279, some provisions of which are attached to this Agreement as Exhibit B.

15. CITY OWNERSHIP

All Contractor's work product accomplished under this Agreement, whether in the form of designs, drawings, as-builts, diagrams, specifications, reports, or other writings, shall become the exclusive property of the City. The City is the owner of any copyrights thereto, upon City's final payment to Contractor.

16. AGREEMENT

- A. 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. This Agreement incorporates the City's Request for Proposal/Solicitation of Bids document and Contractor's Response/Bid. In the event of a conflict between the terms of this Agreement and any incorporated document, unless otherwise specifically stated, this Agreement will control.
- B. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties. Payment shall not be made for any Services not set forth in Exhibit A without the written agreement with the City. In the event Contractor and City agree to any modification in the Services set forth in Exhibit A, the parties will execute an amendment to this Agreement, reflecting such modification.

- C. Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other party.
- D. This Agreement and all exhibits and addenda hereto are complementary and what is required in one shall be binding as if required by all. If there is a conflict between terms of the documents, the more specific requirement shall govern over the more general. No term of this Agreement is intended to waive or supersede a legally mandated term of this Agreement under ORS Chapter 279, 279A, 279B, and 279C, and Administrative Rules promulgated to implement those ORS Chapters.
- E. The failure of City to insist upon or enforce strict performance by Contractor 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.

By authorized signature hereunder, each party sets their hand to this Agreement:

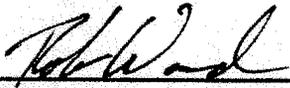
CITY OF NEWPORT:



By: Jim Voetberg, City Manager

1-17-12
Date

CONTRACTOR:



By: Rob Ward, Ward NorthWest, Inc.

1/13/12
Date

EXHIBIT A

Newport Municipal Airport Fill, Project No. 2011-026 Topographical Quantity Survey for Clearing/Grubbing, Excavation, and In-Place Sand Fill

Cost: \$4,500.00

Project Includes:

- Area topo for the extent of the site cleared and grubbed, including approximate surface area in Acres
- Topographical survey quantity of unsuitable material excavated in Cubic Yards
- Topographical survey of quantity of sand, compacted in place, Cubic Yards
- Vertical and Horizontal Datum to be based on local site mapping
- Provide six stakes around eastern and northern roadways along the site periphery
- All drawings will be provided in a dwg file format.

EXHIBIT B

ORS CHAPTER 279B PUBLIC CONTRACTING REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

- (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).
- (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).
- (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).
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617. ORS 279B.220(4).
- (5) 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).
- (6) 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).
- (7) 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).
- (8) 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).

- (9) 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.
- (10) The contract may be canceled at the election of Contracting Agency for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- (11) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (12) Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors. ORS 279A.110.
- (13) Contractor may not assign this contract, delegate its duties, or subcontract these services without prior written approval from Contracting Agency.
- (14) Contractor will comply with ORS 279B.225 relating to the salvaging, recycling, composting or mulching yard waste material.