

ACOUSTIC ENGINEERING CONSULTING SERVICES CONTRACT
City of Newport

This Contract is by and between City of Newport ("City") and **Altermatt Associates, Inc.** ("Engineer") for the performance of engineering services for the City's New Acoustic System, Newport Performing Arts Center Project as detailed in the Request for Proposals for these services.

A. RECITALS

City has conducted a formal solicitation for proposals from engineering firms pursuant to City Public Contracting Rule 137-048-0220. Engineer submitted its proposal, having examined the Request for Proposals (RFP), and was chosen as the most highly qualified engineering firm, best suited to meet the City's needs, pursuant to the RFP criteria.

City has awarded the contract to Engineer.

B. CONTRACT EXHIBITS

The following exhibits are hereby incorporated by reference into this Contract:

- Exhibit A – City's Request for Proposal
- Exhibit B – Engineer's Proposal
- Exhibit C – Schedule of Charges
- Exhibit D – Oregon Personal Services Public Contracting Code Requirements

C. AGREEMENT

1. Term

The term of this Contract shall be from its execution to project completion one calendar year from the date of the last signature on the Contract, and may be extended for additional periods of time upon mutual agreement of both parties. Such extension(s) will consider Engineer's schedule of charges attached as Exhibit C to this Agreement.

2. Scope of Work

Engineer shall provide all services and deliver all materials as specified in the attached Exhibits A and B. All services and materials shall be provided by Engineer in accordance with the Exhibits in a competent and professional manner.

During Construction/Installation, Engineer shall be available to receive Engineer and City questions. Responses to Engineer and City questions and issues shall be received by City within 24 hours.

Upon City's request and without additional compensation, Engineer shall make such revisions to completed Contract Documents as are necessary to correct errors or omissions appearing therein, which deviated from the standard of care described in Section 20.

If all purchase bids come in over the City's budgeted amount for the construction/installation project, or otherwise must all be rejected, Engineer shall either redraft project specifications to bring the project within budget or rebid the project, at the City's discretion. City may choose to negotiate compensation for Engineer's costs associated with redrafting project specifications, upon receipt of Engineer's written request to this effect, in City's sole discretion. Engineer shall be responsible for the costs of all licenses and permits necessary to perform the services under this Contract, and to arrange for and obtain all such licenses and permits from the appropriate office or agency.

3. Compensation

3.1 Payment. Engineer shall complete its scope of work as defined above and in the attached exhibits above on the New Acoustic System, Newport Performing Arts Center Project based upon Exhibit C rates.

3.2 Invoices. Payments shall be based upon monthly invoices which Engineer shall submit to the City, detailing the previous months' fees, costs and percentage of the project completed at that time. Reimbursable expenses shall be itemized and backup invoices provided if required by City. Upon request, Engineer will provide the City with documents, records, and draft plans evidencing the progress made on the project to date. Engineer shall send invoices to City's representative at City's address set forth in Section 5. No payment shall be due for work undertaken, but not invoiced monthly during the course of the project.

3.3 Payments.

- a. City will review Engineer's invoice and within ten (10) days of receipt notify Engineer in writing if there is a disagreement or dispute with the invoice. If there are no such disputes with the invoice, City shall pay the invoice amount in full within thirty (30) days of invoice date.
- b. If City fails to make any payment due Engineer for services and expenses within thirty (30) days of the date on Engineer's invoice therefore, late fees will be added to amounts due Engineer at the rate of 1.0 percent (1%) per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute. In addition, Engineer may, after giving seven (7) days written notice to City, suspend services under this Contract until Engineer has been paid in full all amounts due for services, expenses, and charges, except any invoices in dispute.

4. Contractor Is an Independent Contractor

Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under this Contract. While City reserves the right to set the schedule and evaluate the quality of Engineer's completed work, City cannot and will not control the means and manner of Engineer's performance. Engineer is responsible for determining the appropriate means and manner of performing work. Engineer is responsible for all federal and state taxes applicable to compensation and payment paid to Engineer under the Contract and will not have any amounts withheld by City to cover Engineer's tax obligations. Engineer is not eligible for any City fringe benefit plans.

5. Notices

All notices provided for hereunder shall be in writing and shall be deemed to be duly served on the date of delivery if delivered in person, when receipt of transmission is generated by the transmitting facsimile machine if delivered by facsimile transmission, on the day after deposit if delivered by overnight courier, or three days after deposit if delivered by placing in the U.S. mail, first-class, postage prepaid. Any notice delivered by facsimile transmission shall be followed by a hard copy. All notices shall be addressed as follows:

City: Timothy Gross, PE
City of Newport
169 SW Coast Highway
Newport, OR 97365
Phone: (541) 574-3369
Fax: (541) 265-3301
t.gross@newportoregon.gov

Engineer: Russell N. Altermatt, PE
6745 SW 13th Avenue
Portland, OR 97219
Phone: (503)221-1044
Fax: (503)221-1445

6. Indemnification

Engineer shall indemnify and hold City and its representatives, officers, directors, and employees harmless from any loss or claim made by third parties, including legal fees and costs of defending actions or suits resulting directly or indirectly from Engineer's negligent performance and/or fault of Engineer, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of City and Engineer, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

Upon a determination of fault rendered by an arbitration panel or court of competent jurisdiction on any claim covered under this section, Engineer shall reimburse City's defense costs to the degree of negligence or other fault attributed to Engineer.

7. Insurance Requirements

7.1 During the term of this Contract, Engineer shall maintain, at its own expense, the following types of insurance in the following amounts:

- a. Comprehensive general liability insurance, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage:

\$2,000,000 – each occurrence (bodily injury)

\$2,000,000 – general aggregate

\$1,000,000 – property damage, contractual, etc.

Coverage shall also include contractual liability coverage for the indemnity provided under this contract.

- b. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence.
- c. Errors and Omissions insurance covering Engineer's liability arising out of negligent acts, errors or omissions in its performance of work or services under this Contract. Such policy will have a combined single limit of not less than \$1,000,000 per each claim, incident or occurrence for the term of the Project. Such policy will be maintained for the 2 year period upon completion of the Contract and specifically include "tail" coverage for any "claims made" policy.
- d. Automobile liability insurance coverage (owned, not owned, and hired) for bodily injury and property damages: \$1,000,000 each accident.

7.2 Insurance coverage shall be maintained for a period of 2 years after completion of this Contract. It shall also include a 2 year "tail" policy for any "claims made" policies made part of this Contract.

7.3 Policies shall provide that City, its directors, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 8.1(a) and a waiver of subrogation against them shall be obtained for all coverages. Note: Not applicable to Errors and Omissions insurance coverage.

7.4 All coverages under Section 7.1 shall be primary over any insurance City may carry on its own.

7.5 Engineer shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under

this Contract.

- 7.6 All policies of insurance shall be issued by good, responsible companies, with a minimum A.M. Best's Rating Services of not less than A-7 and that are qualified to do business in the state of Oregon.
- 7.7 Engineer shall furnish City with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. If requested by City, Engineer shall furnish City with executed copies of such policies of insurance. Engineer shall furnish City with at least 30-days' written notice of cancellation of, or any modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

8. Workers' Compensation

- 8.1 Engineer, its subcontractors, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.
- 8.2 Engineer warrants that all persons engaged in Contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Engineer shall indemnify City for any liability incurred by City as a result of Engineer's breach of the warranty under this paragraph.

9. Hours of Employment

Engineer shall comply with all applicable state and federal laws regarding employment.

10. Assignment

Engineer may not assign any of its responsibilities under this Contract without City's prior written consent, which consent may be withheld in City's sole discretion. Engineer may not subcontract for performance of any of its responsibilities under this Contract without City's prior written consent, which consent shall not be unreasonably withheld. Engineer's assigning or subcontracting of any of its responsibilities under the Contract without City's consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, Engineer shall remain liable for all of its obligations under this Contract.

11. Labor and Material

Engineer shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Contract work, all at no cost to City other than the compensation provided in this Contract.

12. Ownership of Work and Documents

All work performed by Engineer and compensated by City pursuant to this Contract shall be the property of City upon full compensation for that work performed or document produced to Engineer, and it is agreed by the parties that such documents are works made for hire. Engineer hereby conveys, transfers and grants to City all rights of reproduction and the copyright to all such documents. However, in the event City reuses or modifies any materials furnished to City by Engineer, without Engineer's involvement or consent, then Engineer shall not be responsible for the materials.

13. Termination for Convenience

This Contract may be terminated by mutual consent of the parties upon written notice. In addition, City may terminate all or part of this Contract upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Engineer. Upon termination under this paragraph, Engineer shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Engineer. Pursuant to this paragraph, Engineer shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Engineer. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Engineer can show good cause beyond its control for the delay.

14. Termination for Cause

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

- 14.1 If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.
- 14.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 14.3 If any license or certificate required by law or regulation to be held by Engineer to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

15. Termination for Default

Either City or Engineer may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of

termination.

If Engineer fails to perform in the manner called for in this Contract or if Engineer fails to comply with any other provisions of the Contract, City may terminate this Contract for default.

Termination shall be effected by serving a notice of termination on Engineer setting forth the manner in which Engineer is in default. Engineer shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract.

16. Remedies

In the event of breach of this Contract the parties shall have the following remedies:

- 16.1 If terminated under paragraph 15 by City due to a breach by Engineer, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Engineer shall pay to City the amount of the reasonable excess.
- 16.2 In addition to the above remedies for a breach by Engineer, City also shall be entitled to any other equitable and legal remedies that are available.
- 16.3 If City breaches this Contract, Engineer's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Engineer is entitled.
- 16.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.
- 16.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Engineer shall immediately cease all activities related to the services and work under this Contract. As directed by City, Engineer shall, upon termination, deliver to City all then existing work product that, if the Contract had been completed, would be required to be delivered to City.

17. Nondiscrimination

During the term of this Contract, Engineer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

18. Governing Law; Jurisdiction; Venue

This Contract shall be governed by and construed in accordance with the laws of the state of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between City and Engineer that arises from or relates to this Contract which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Lane County for the state of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States City Court for the City of Oregon. ENGINEER BY EXECUTION OF THIS

CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

19. Compliance with Laws and Regulations

Engineer shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Engineer expressly agrees to comply with: (i) ORS 659.425; (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) City's performance under this Contract is conditioned upon Engineer's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit D and incorporated herein by this reference. Engineer, its subconsultants and all employers providing work, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Engineer shall adhere to all safety standards and regulations established by City for work performed on its premises or under its auspices.

20. Experience, Capabilities and Resources

By execution of this Contract, the Engineer agrees that:

Engineer is an experienced Engineering firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract to design or administer the work of the scope and complexity of this project.

Engineer has the capabilities and resources necessary to perform the obligations of this Contract.

Engineer is familiar with all current laws, rules, and regulations which are applicable to the design and construction of the project, and that all drawings, specifications, and other documents prepared by Engineer shall be prepared in accordance with the standard of care of other professionals performing similar services under similar conditions and in an effort to accurately reflect and incorporate all such laws, rules, and regulations.

21. Drawings, Specifications and Other Documents

Engineer hereby agrees that it will, in a manner consistent with its standard of care defined in above in Section 20, prepare all drawings, specifications, and other documents pursuant to this Contract so that they are complete and that the project, if constructed in accordance with the intent established by such drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility.

22. Errors and Omissions

Engineer shall be responsible for correcting any errors or omissions in the drawings, specifications, and/or other documents which deviate from the standard of care set forth in Section 20. Engineer shall correct at no additional cost to City any and all such errors and omissions in the drawings, specifications, and other documents prepared by Engineer or its

subconsultants. Engineer further agrees to assist City in resolving problems relating to the project designs or specified materials.

23. Contract Performance

Engineer shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. All construction documents shall be completed sufficient for turn in for permit review and the dates for such shall be negotiated

Engineer shall not be liable for delays that are beyond Engineer's control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any breach of Engineer's warranties or a default or defect in performance by Engineer that has not been cured. Engineer agrees that time is of the essence under this Contract.

24. Access to Records

For not less than three (3) years after the Contract expiration and for the purpose of making audit, examination, excerpts, and transcripts, City, and its duly authorized representatives shall have access to Engineer's books, documents, papers, and records that are pertinent to this Contract. If, for any reason, any part of this Contract, or any resulting construction contract(s) is involved in litigation, Engineer shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Engineer shall provide full access to these records to City, and its duly authorized representatives in preparation for and during litigation.

25. Representations and Warranties

Engineer represents and warrants to City that (1) Engineer has the power and authority to enter into and perform this Contract, (2) when executed and delivered, this Contract shall be a valid and binding obligation of Engineer enforceable in accordance with its terms, (3) Engineer shall, at all times during the term of this Contract, be duly licensed to perform the services, and if there is no licensing requirement for the profession or services, be duly qualified and competent, (4) the services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

26. City Obligations

- 26.1 City shall provide full information in a timely manner regarding requirements for and limitations on the project. With regard to subcontractor liens, City shall furnish to Engineer, within fifteen (15) days after receipt of a written request, information necessary and relevant for Engineer to evaluate, give notice of, or enforce lien.
- 26.2 City shall establish and update, if necessary, overall project budgets, including Engineering and construction costs.
- 26.3 City shall furnish the services of consultants, including geotechnical engineers, when such services are requested by Engineer, reasonably required by the scope of a project,

and agreed to by City.

- 26.4 City shall furnish all testing as required by law or the contract documents.
- 26.5 City shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the City's needs and interests, after Engineer has performed requisite project management and oversight duties.
- 26.6 City shall provide prompt written notice to Engineer if City becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in Engineer's design or performance under the contract.
- 26.7 City shall pay Engineer in accordance with paragraph 3 and Exhibit C of this Contract, upon receipt of Engineer's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed and progress made upon the project to date, on a pro rata basis.
- 26.8 City shall report the total amount of all payments to Engineer, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.
- 26.9 City shall guarantee access to, and make all provisions for Engineer to enter upon public and private property necessary for performance of the Scope of Work over which City exercises control.

27. Arbitration

All claims, disputes, and other matters in question between the City and Engineer 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 Lane County Circuit Court will establish rules to govern the arbitration.

A claim by Engineer 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 Engineer 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 Engineer.

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 Engineer 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.

28. 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's 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, Engineer agrees to pay City's attorney's 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.

29. Successors and Assigns; Subcontractors and Assignments

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

30. Limitation of Liabilities

City shall not be liable for (i) any indirect, incidental, consequential, or special damages under the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

31. Foreign Contractor

If Engineer is not domiciled in or registered to do business in the state of Oregon, Engineer shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Engineer shall demonstrate its legal capacity to perform the work under this Contract in the state of Oregon prior to entering into this Contract.

32. Confidentiality

Engineer shall maintain the confidentiality of any of City's information that has been so marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Engineer from establishing a claim or defense in an adjudicatory proceeding. Engineer shall require similar agreements from City's and/or Engineer's subconsultants to maintain the confidentiality of information of City.

33. Force Majeure

Engineer shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

34. Waivers

No waiver by City of any provision of this Contract shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Engineer of the same or any other provision. City's consent to or approval of any act by Engineer requiring City's consent or approval shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Engineer, whether or not similar to the act so consented to or approved.

35. Severability

Any provisions of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

36. Headings

The captions contained in this Contract are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

37. Integration

This Contract, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Contract.

38. Amendments

Changes to the Contract shall be made only by written Amendment. No change in the work or any extra work shall be performed prior to execution of an Amendment by City, signed by the Engineer and City authorizing a change in the work and/or an adjustment in the price, deliverable due dates, substantial completion date, or final completion date. The price included on any Amendment shall be inclusive of all estimated costs, both direct and indirect, relating to the change in work. Further, the Amendment shall provide a detailed basis for substantiating any monetary and/or work changes. If monetary changes are made, the Amendment shall contain a maximum not to exceed amount.

39. Authority

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to make this Contract.

40. Certificate of Compliance with Oregon Tax Laws

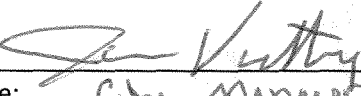
By executing this Contract, Engineer certifies under penalty of perjury that Engineer is, to the best of Engineer's knowledge, not in violation of any Oregon tax laws described in ORS 305.385(6) and (7).

CITY:

CITY OF NEWPORT

ENGINEER:

Altermatt Associates, Inc.

By: 
Title: CITY MANAGER
Date: 5/31/13

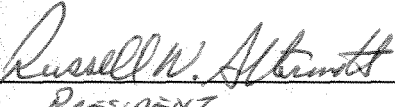
By: 
Title: PRESIDENT
Date: 5-31-13

Exhibit A

Request for Proposal

See attached City of Newport Request for Proposal for Acoustic Engineering Consultant Services

Exhibit B

Proposal to provide Consulting Engineering Services to the City of Newport as the Acoustic Sound Engineer for the New Acoustic System for the Newport Performing Arts Center dated February 27, 2013, and the letter providing additional information and clarification dated March 13, 2013 from Altermatt Associates, Inc. are both included as part of this document by reference.

Exhibit C

Engineer's Schedule of Rates and Charges

Altermatt Associates, Inc.

Consultants in Acoustics

FEE SCHEDULE

Effective January 1, 2013

The hourly billing rates for the consulting services of Altermatt Associates, Inc. are the following:

Principal	\$160
Senior Engineer	120
Staff Engineer	105
Engineer	90
Designer/Technician	80
Secretary/Production	68

Expenses/Direct Costs:

The following expenses for materials and processes, incurred through the course of the project, will be billed at cost in addition to the man-hour charges listed above.

Document Production: Report production photocopying in excess of 50 pages, Construction Plans plotting, copying, etc., either as part of contracted design documents or for mark-up as part of the design review process.

Long Distance Telephone

Travel (outside the Portland metropolitan area): Travel time for required trips outside the Portland area, Auto Trip Mileage (standard mileage rates), fares of other transportation means (every effort will be made to take advantage of available discounts whenever possible), rental autos.

Meals and Lodging: During travel and project time outside the Portland Metropolitan area, and when required project time occurs before 8 AM, or, after 6 PM.

Instrumentation: For all projects requiring measurement instrumentation charges will include the direct cost of any equipment rental as well as the following fees for in-house equipment.

General Sound Measurement	\$150/Day
Statistical Sound Measurement (Environmental, Occupational)	\$180/Day
FFT-Type Sound and Vibration Measurement: (Reverberation Time, Reflection Analysis, Narrowband Vibration Measurement, etc.)	\$250/Day

Exhibit D

Oregon Public Contracting Requirements

ORS CHAPTER 279B PUBLIC CONTRACTING REQUIREMENTS FOR THE PURCHASE OF GOODS AND SERVICES

- (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 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.
- (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).
- (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).
- (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).
- (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).

- (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 or emerging small 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.

CITY OF NEWPORT
TASK ORDER NO. 1
TO ENGINEERING SERVICES AGREEMENT
FOR ACOUSTIC ENGINEERING
CONSULTING SERVICES

This TASK ORDER NO. 1 to the Acoustic Engineering Consulting Services Agreement dated June 7, 2013, hereinafter called Agreement, between the City of Newport, (CITY), and Altermatt Associates, Inc., (ENGINEER).

A. DESCRIPTION OF PROJECT

Provide acoustic engineering consulting services for the City of Newport's Newport Performing Arts Center Acoustic System per the attached scope of services.

B. SCOPE OF SERVICES

The City agrees to utilize the services of ENGINEER and ENGINEER agrees to perform acoustic engineering consulting services set forth in Attachment A.

C. CITY'S RESPONSIBILITIES

CITY to provide ENGINEER with the following information:

1. CITY shall provide a generally used CITY equipment provision and installation RFP.
2. CITY shall provide timely review of submitted products (1-week turnaround), as appropriate.

D. COMPENSATION

1. CITY shall pay ENGINEER according to the fee schedule set forth in Exhibit A to the Engineering Services Agreement dated May 31, 2013.
2. Services provided under this Task Order shall not exceed three thousand five hundred dollars (\$3,500.00) for Engineering Consulting Services and seven hundred dollars (\$700) for Direct Costs.

E. MISCELLANEOUS

All terms and conditions of the Engineering Services Agreement apply to this Task Order as though fully set forth therein. In the event of a conflict between this Task Order and the Engineering Services Agreement, the terms of this Task Order shall apply.

The parties do mutually agree to all mutual covenants and agreements contained within this Task Order No. 1.

CITY OF NEWPORT:

By: Jack Smith
Title: Interim City Manager
Date: June 18, 2013

ALTERMATT ASSOCIATES, INC.

By: Russell W. Altermatt
Title: PRESIDENT
Date: June 14, 2013

June 4, 2013

City of Newport
Department of Public Works
169 SW Coast Highway
Newport, OR 97365

Attention: Mr. Tim Gross

Reference: Newport Performing Arts Center
Acoustic Enhancement System, Task 1

Proposal 13018A

Dear Mr. Gross:

In following up our meeting last week, this letter is submitted in proposal to provide acoustical consulting services for the referenced project. The project is understood to be 1) the development of the performance specification for a request for proposals (RFP), and 2) review of proposal submission for selection of a design-build contractor, all for the referenced project. The following tasks are expected.

A. SCOPE OF WORK

1. Develop Request for Proposal Language

- 1.1 Review wording of a general equipment provision and installation RFP typically used by the City of Newport.
- 1.2 Modify wording to incorporate recommended technical and coordination language for the RFP to provide, install, and adjust a new electronic, Acoustic Enhancement System for the Alice Silvermanm Theatre. Include language recommended for Owner protection (warranty period, job site clean-up, etc.).
- 1.3 Assist in coordinating issuance of the RFP and questions from potential contractors, as required.

2. Review of Submittals and Contractor Selection

- 2.1 Review submitted design-build proposals.

- 2.2 Advise City of Newport of advantages, disadvantages, and concerns of submitted design approaches and submitted materials.
- 2.3 Meet with the City of Newport to review submittals and assist in the selection of the design-build Contractor.

B. FEES

1. Altermatt Associates, Inc. proposes to provide three services of the above Scope of Work, billing on an hourly basis according to the Fee schedule of the Acoustic Engineering Consulting Services Contract, up to the not-to-exceed fee of \$ 3,500.

2. Direct Costs

In addition to the above fees, Direct Costs (expenses according to the appended Fee Schedule & Services Form) will be billed at cost. Such costs would include expenses for the proposed meeting in Newport to select the contractor. Expenses would include travel time (at 70% rate), and auto trip mileage. Direct costs for the single trip are currently expected to not exceed \$ 700. No additional fees are currently expected, assuming the meeting can take place to allow travel in both directions on the same day. Otherwise, if required, lodging and meal expenses would be billed for an overnight stay.

3. Meetings

Fees include up to 3 hours for a submittal review meeting. Subsequent meetings, if required, would be billed on an hourly basis as Additional Services.

4. Additional Services

Fees for Additional Services, not itemized in the above Scope of Work, shall be mutually agreed upon between the Owner and Consultant prior to the Consultant's performance of such services. Fees for additional services shall be billed according to the hourly rates on the Fee Schedule of the Acoustic Engineering Consulting Services Contract.

5. Payments

This Proposal is submitted on the basis that partial payments will be made according to the Acoustic Engineering Consulting Services Contract on receipt of monthly statements of engineering fees and direct costs reimbursable.

Tim Gross
June 4, 2013
Page 3

Please sign one copy of this proposal and return it to us so that we may proceed at your direction.
We look forward to assisting you on this project.

Sincerely,
ALTERMATT ASSOCIATES, INC.



Russell N. Altermatt, P.E.
Principal Engineer

RA:sa
Enclosure

Signed Ted Smith Date 6-7-13

Name (Print) TED SMITH

Title Interim City Manager
City of Newport