

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

Engineer of Record

THIS AGREEMENT is between City of Newport, an Oregon municipal corporation (City), and HDR Engineering, Inc., a Nebraska corporation, which is registered to practice Civil Engineering in the State of Oregon (Consultant).

RECITALS

- A. Pursuant to public contracting rule 137-048-0220, the City of Newport (City) solicited proposals for professional Consulting services to assist the City in Engineering Services.
- B. After reviewing all proposals, the City has selected HDR Engineering, Inc. (Consultant) as a Consultant of Record 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 Civil Engineering. 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. 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.

- 8) Re-use of Consultant's Work Product for purposes not contemplated in this Agreement shall be at the re-user's sole risk and without liability to Consultant.

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 without unreasonable delay 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 negligent 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 reasonably 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 negligent 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 providing the same or similar services under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a 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 negligent 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 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 save and hold harmless 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, 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 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 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, redacted for pricing and employee information, the required insurance coverages. A copy of each insurance policy, 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:

Chris Janigo, PE
Acting City Engineer
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

Chris Janigo, PE
Acting City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365
541-574-3366
c.janigo@newportoregon.gov

IF TO CONSULTANT

Verena Winter
Contract Manager
HDR Engineering, Inc.
1050 SW 6th Ave
Suite 1800
Portland, OR 97204-1151
503-423-3756
Verena.Winter@hdrinc.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 reasonable 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 negligent 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 upon agreement of both parties, 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 – Consultant of Record 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:



Spencer R. Nebel, City Manager

Date: 06/11/21

HDR Engineering, Inc.:

By: 

Its: Vice President

Date: 4/19/21

EXHIBIT A
CONSULTANT'S FEE SCHEDULE

City of Newport Rate Schedule

Civil Engineering, Integration, and Other Related Professional Services Agreement

Rates effective January 1 through December 31, 2021

Category	2021 Billing Rates
Principal In Charge	\$295.20
Sr. Project Manager	\$253.18
Project Manager	\$179.38
Technical Advisor II	\$395.65
Technical Advisor I	\$300.33
Engineer V	\$274.70
Engineer IV	\$231.65
Engineer III	\$211.15
Engineer II	\$174.25
Engineer I	\$147.60
EIT	\$115.83
Planner/Scientist IV	\$189.63
Planner/Scientist III	\$169.13
Planner/Scientist II	\$142.48
Planner/Scientist I	\$115.83
Project Technician IV	\$174.25
Project Technician III	\$152.73
Project Technician II	\$121.98
Project Technician I	\$90.20

Notes: Rates valid through December 31 of each year, after which they will be adjusted for the CPI-U Western Region

Expenses	
Mileage	At IRS Rate
Travel & Hotel	At Cost
Other Direct Cost	At Cost
Subconsultants	5% Markup

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

EXHIBIT C

Consultant of Record RFP and Consultant's Proposal



**REQUEST FOR PROPOSALS
CIVIL ENGINEERING, INTEGRATION, AND OTHER RELATED PROFESSIONAL SERVICES**

Envelope(s) shall be sealed and marked with **REQUEST FOR PROPOSALS, CIVIL ENGINEERING, INTEGRATION, AND OTHER RELATED PROFESSIONAL SERVICES**. Respondents must submit one (1) original and three (3) complete hard copies of their proposal and one (1) pdf copy on CD/USB. Proposal must be received by the City by the proposal deadline. Late proposals will not be considered. There will be no formal bid opening.

DEADLINE FOR RECEIPT OF PROPOSAL: December 15, 2020 by 5:00 P.M.

SUBMIT MAILED PROPOSAL TO: Chris Janigo, PE
Acting City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365

DELIVER PROPOSAL TO: Public Works Counter
Newport City Hall
169 SW Coast Highway
Newport, OR 97365

INFORMATION CONTACT: Chris Janigo, PE
(541) 574-3376
c.janigo@newportoregon.gov

This request for proposal may be cancelled or any or all proposals may be rejected for failure to comply with procedures or requirements or if the City determines it is in the public interest to do so.

[Publish at least once in one newspaper of general circulation, at least 14 days before closing date, and in as many other issues/publications as the City desires. City Rule 137-0488-0220(2)]

**CITY OF NEWPORT, OR
REQUEST FOR PROPOSALS FOR
CIVIL ENGINEERING, GEOTECHNICAL, STRUCTURAL, ARCHITECTURE, AND OTHER RELATED
PROFESSIONAL SERVICES**

Pursuant to City Rule 137-048-0220, the City of Newport (City) is conducting a formal qualification-based selection procedure to select qualified firms or individuals to provide professional engineering services. The full Request for Proposals may be obtained from orpin.oregon.gov or contact:

LeAnn Prchal, Administrative Assistant
City of Newport
169 SW Coast Highway
Newport, OR 97365
Telephone: 541-574-3366
Email: l.prchal@newportoregon.gov

Proposals will be received by the City until closing, 5:00 pm, **December 15, 2020**. Responses received after this time will be rejected as non-responsive. Proposers shall submit proposals in a sealed envelope, plainly marked **"REQUEST FOR PROPOSALS, CIVIL ENGINEERING, GEOTECHNICAL, STRUCTURAL, ARCHITECTURE, AND OTHER RELATED PROFESSIONAL SERVICES"** to the Public Works Director's Office at the below address. Faxed and emailed proposals will be rejected as non-responsive.

Chris Janigo, PE
Acting City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365

This request for proposal may be cancelled or any or all proposals may be rejected for failure to comply with procedures or requirements or if the City determines it is in the public interest to do so.

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SECTION 1 – INTRODUCTION

1.1 Introduction

The City of Newport (City), Oregon is located on the central Oregon Coast at the mouth of the Yaquina River. The City has approximately 10,200 permanent residents and many vacation properties and seasonal visitors. In addition, the City of Newport hosts a significant commercial industrial base including: the largest fishing fleet on the Oregon coast, numerous fish processing facilities, the Rogue Brewery, a large marine research community including the NOAA Pacific Fleet Headquarters, Hatfield Marine Science Center, OMSI Camp Gray, and the Oregon Coast Aquarium. Additional information about the community can be obtained on the City of Newport’s webpage: <http://www.newportoregon.gov> and at the City of Newport Chamber of Commerce webpage: <http://www.newportchamber.org/> .

The City owns and operates a number of public facilities including the following:

1. 5 MGD water treatment plant and distribution system including 6 water booster stations, 7 water storage tanks, and a raw water reservoir system of 2 reservoirs/dams impounding approximately 1,200 AC-FT
2. 5 MGD wastewater treatment plant and collection system including 26 pump stations
3. Transportation system including roadways, sidewalks, bridges, trails, etc.
4. Storm water system including catch basins, culverts, outfalls, etc.
5. Municipal airport
6. Recreation Center and Aquatic Center
7. Performing Arts and Visual Arts Centers
8. City Hall

The City requires the services of professional consulting services to assist in the execution of the Capital Improvement Plan in a variety of disciplines. For the past 5 years the City has retained several consulting firms as Consultants of Record (COR) specializing in specific disciplines. The City intends to modify its pool of approximately 8 qualified consultants to perform general professional civil engineering, geotechnical, structural, architecture, and other related professional services primarily in water treatment and distribution, wastewater collection, street and storm sewer improvements, bridges and building renovations. The actual number of firms selected will depend upon the qualifications of those responding to this RFP. There are several specialty discipline contracts awarded through previous qualification-based selection RFP’s including grant consulting and dam seismic analysis and design that the City intends to maintain.

The City plans to undertake a number of projects in the next several years and wishes to work with consultants of record to perform work under a price agreement. Services will be provided under renewable contracts with an initial contract period of three (3) years with up to a maximum of two (2) additional one (1) year renewal periods. Under these contracts, work will be assigned on a project-by-project basis. This process will provide the City with another mechanism to procure professional services. It is anticipated this method of procurement may be used to assist in handling peak workloads in the design and construction of Capital Improvement Program (CIP) projects as well as other unanticipated projects. Additionally, these services may be used to provide technical expertise not possessed by City staff as needed for various assignments. It is also expected that other City Departments will use these contracts on a limited basis as approved by the Contract Administrator. There are no predetermined, known project assignments at the time of the RFP.

1.2 Process Description

The first step in the selection process is this request for proposals (RFP).

Second is the submission of proposals by consulting firms who wish to, and are capable of, performing the professional services the City needs. A proposing consultant may seek to be considered for one, several, or all project areas discussed in this RFP (See Section 2).

Third, a City selection committee will review and rank the proposals. The committee may interview any number of proposers if it determines that interviews would assist the decision-making process.

The final step in the RFP process is completion of price agreements with one or more engineering consultants. The City anticipates that the price agreements will be for three years, with the possibility of two additional one-year extensions. Once a price agreement is entered into with a consultant, the City may, consistent with the price agreement, contract with the consultant of record directly without further competitive processes. The price agreements may include a formula for price adjustments on an annual basis (1.5).

The intent of this RFP is to pre-qualify a group of professional service firms as resources the City, at its sole discretion, can select from to provide general civil, structural, geotechnical, and design services for typical public works infrastructure and facility projects. Projects can range from very small utility projects to projects with a multi-million-dollar construction value for utility, street, or building improvement. Therefore, the City will consider small and large firms for these contracts.

The City also reserves the right to use other means of procurement (such as individual formal RFP's) at its sole discretion (1.3).

1.3 Qualification Based Selection (QBS)

The City, via this competitive RFP process, intends to revise the current consultants named as the Consultants of Record (COR). The City, at its sole preference and in accordance with City procurement rules, may, based on evaluation results, select more, or fewer proposers, from the number of proposals submitted.

Each team working on City projects shall have an Oregon licensed professional in the COR contract area responsible for reviewing and finalizing project material.

1.4 No Guarantee

There will be no guarantee as to the amount of work or size of any project assignment, if any, that a COR may be given under these contracts.

1.5 Rates and Fees

Finalized contracts will include set hourly rate and fee schedules for the term of the contract set by each firm following successful consultant selection. Rates may be increased as approved by the City, for each annual contract renewal, at a rate no greater than the inflationary rate for the preceding contract year

(July 1 to June 30) as calculated by the Consumer Price Index for the Portland area for Urban Wage Earners as published by the U.S. Department of Labor, Bureau of Labor Statistics. Firms must request increases at the time of contract renewal for next fiscal year.

SECTION 2 - SCOPE OF SERVICES

2.1 Project Assignment Process

The CORs shall provide professional services on a task order basis and for a "not to exceed" fee based on fee schedule. The City makes no guarantee as to the volume of work, if any, that will be assigned in any given contract year. Each project assignment will consist of a specific scope of services; however, services shall include, but not be limited to, the general scope as shown in subsection 2.5.

2.2 Project Assignment

City will negotiate all project assignments.

- If the estimated fee of an individual project assignment is under \$100,000, the project assignment may be by direct appointment to one of the qualified CORs. The City, as its choses, may directly appoint the COR most qualified and the best fit for the individual project assignment.
- If the estimated fee of an individual project assignment is between \$100,000 and \$250,000, the project assignment shall be made using an informal or formal RFP process, where an informal RFP shall be issued to at least three (3) qualified CORs established by this RFP. However, if less than three (3) qualified CORs are established by this RFP process, the informal RFP shall be issued to all CORs.
- If the estimated fee of an individual project assignment is more than \$250,000, up to \$1,000,000, the project assignment shall be made using an informal or formal RFP process, where an informal RFP shall be issued to at least five (5) qualified CORs established by this RFP. However, if less than five (5) qualified CORs are established by this RFP process, the informal RFP shall be issued to all CORs.
- If the estimated fee of an individual project assignment is \$1,000,000 or more, the project assignment shall be made using another formal RFP process, including advertisement of the RFP.

The City expressly reserves the right to:

1. Assign any work to any proposer that it enters into an agreement with, based on the City's discretionary determination as to which contractor is best suited for the particular work, considering capability, capacity and price.
2. Solicit professional services with a formal RFP for a major project, such as a water treatment plant.

2.3 Key Staff

The COR shall designate a key staff person to be the City's primary contact for the duration of the

contract. Substitution of these persons shall be by written request and subsequent approval by the City. The City expects CORs to strive to maintain the same project managers and key team members through the duration of the Contract.

2.4 Sub-Consultants

Because of the diverse and complex nature of potential project assignments, utilization of sub-consultants on the project team may be expected. Sub-consultants shall be approved by the City prior to execution of a task order for a project assignment. Contracted CORs will be responsible for coordinating all work with project team sub-consultants with minimal involvement from the City.

2.5 General Scope

Services under this contract shall consist of general civil engineering, structural, geotechnical, and architecture services, including but not limited to, preliminary reports, project development, design surveys, preliminary and/or final design, preparation of environmental permitting compliance documentation and coordination of environmental project requirements with other consultants, preparation of bid documents, bid and award assistance and construction services for typical CIP projects, including disciplinary categories such as water, sewer, storm water, streets, pump stations, lift stations, reservoirs, buildings, and water and wastewater treatment facility improvements. Services may also include project management, construction management, construction administration, inspection services, construction staking, general consultation, analysis, studies, alternatives review, calculations, report writing, and quality control review of design and bid documents done by City staff or other consultants. If a sub-consultant is necessary to perform any of these services, then the sub-consultant qualifications and rates shall be made a part of the proposal submitted with each individual project. Additionally, if a multi-disciplinary civil firm has other capabilities including but not limited to survey, geotechnical, architecture, traffic, structural and electrical engineering, these services may be utilized.

2.6 Professional Standards

Each COR selected shall be expected to meet or exceed the standards of professional quality for the consultant's profession and certain minimum standards for professionalism, customer service, and quality control. These standards include, but are not limited to, the following:

- Completeness, clarity, and accuracy of delivered materials, such as plans, specifications, and reports. All designs, materials and specifications shall fully comply with pertinent federal, state and agency applicable standards and requirements. Delivered materials which, in the opinion of the City's Project Manager, have not been reviewed or checked properly, will be returned without further review.
- Accuracy of estimates and calculations. Formulas used, and the basis for each calculation, shall be clearly stated.
- Adherence to project schedules. Schedules shall remain in force, unless the project scope changes or the City revises the schedule in writing.
- All delivered materials shall be fully compatible with the City's current software programs.
- Assigned Project Managers and Project team members shall have experience with the type and scope of project being proposed. It will not be acceptable for a COR to assign staff who are not experienced with the particular type of project being proposed.

- Timely response to RFIs, staking requests, and other construction issues.
- Constructability of details and other drawings.
- Completeness of responses to the City’s review comments. Example: Red lined plans shall be returned with all comments either checked off or addressed.
- Alternatives analyses are thoroughly and logically performed and presented. Alternatives analyses which are not comprehensive and thorough will not be accepted.

The above need not be addressed in the proposal. They are provided to clearly communicate the City’s expectations of COR’s performance.

2.7 Performance Appraisals

The City may appraise each COR on a yearly basis as to their prior year’s performance. This Performance Appraisal may include the specific items mentioned in subsection 2.6, as well as general items, such as:

- Qualifications, experience, and skills of staff assigned to projects
- Timeliness
- Quality Control
- Verbal and Written Communications
- Project approach yielding best Cost Control
- Responsiveness to Issues and Requests
- Public Interaction
- Ability to Propose and Evaluate Alternatives

SECTION 3 - RFP PROCESS

3.1 RFP Schedule

The approximate schedule for the RFP is as follows:

Advertisement of RFP	November 18, 2020
RFP Available online.....	November 18, 2020
Proposals due.....	December 15, 2020
Execution of Retainer Agreements	January 15, 2021

3.2 Reimbursement

All costs for preparing proposals, attending interviews (if applicable), and other efforts in pursuit of this RFP are the proposer’s responsibility.

3.3 Further information

Additional information may be obtained from:

Chris Janigo, PE
Acting City Engineer

City of Newport
169 SW Coast Hwy
Newport, OR 97365
(541) 574-3376
(541) 265-3301 fax
c.hjanigo@newportoregon.gov

3.4 Proposal Withdrawal

Any proposer may withdraw its proposal prior to the final deadline for submission by providing the City with a written request stating the desire to withdraw. Withdrawal of a proposal will not prejudice the right of a firm to file a new proposal before the deadline.

3.5 Rejection or Acceptance of Proposals

The City expressly reserves the right to reject any or all proposals.

Publishing this RFP does not commit the City to any contract, project award, or financial obligation to any of the respondents. The City reserves the right to use whatever means it considers appropriate and prudent when determining which firms are offered projects.

3.6 Protests

Protests are subject to and must comply with the City's Public Contracting Rules available on the City's webpage at <http://www.newportoregon.gov/dept/adm/documents/PublicContractingRules-2012.pdf>

3.7 Public Records

Any information submitted through this RFP process shall be a public record. However, during the evaluation period, the proposals shall be considered as confidential information. If any proposal contains information that is considered a trade secret under ORS 192.501(2), each sheet containing proprietary information should be marked as follows:

"This data constitutes a trade secret and shall not be disclosed except in accordance with Oregon Public Records Law, ORS Chapter 192."

The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted, and claims arising out of any public record request for such information shall be at the consultant's expense.

Identifying the proposal in whole as a trade secret is not acceptable. Failure to identify a portion of the proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret.

3.8 Tax ID Numbers

Proposers must provide their Federal and State of Oregon Taxpayer ID Number.

3.9 Recycled Products Statement

In accordance with ORS 279 A.125, respondents shall use recyclable products to the maximum extent economically feasible in the performance of the contract work under this RFP.

3.10 Local/State/Federal Requirements

The selected proposer(s) shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279 A, B & C. In addition, the proposers agree to comply with: (1) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1991 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Proposer is subject to the Oregon Worker's Compensation Law and shall comply with ORS 656.017, which requires the provision of Worker's Compensation coverage for all employees working under any contract resulting from this RFP. The City of Newport's programs, services, employment opportunities and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, disability or political affiliation.

SECTION 4 – PROPOSAL CONTENT REQUIREMENTS

4.1 Length and Format of Proposal

The City is imposing a page ten (10) page limit on proposals, not including a one- to two--page introduction letter. The City is not interested in boilerplate information or company brochures. All firms responding to this RFP are directed to provide relevant information that will be useful to the selection committee.

Proposals should include the information described in this section. Additional information may be provided only if it is relevant, if it provides special insight or information about a proposer's capabilities, and fits within the ten-page proposal limit.

Proposals should be prepared economically and simply. No consideration will be given to special bindings, color displays, promotional materials, etc. Emphasis should be on completeness, relevance, and clarity of content.

4.2 Proposal Requirements

The proposal should describe the proposer's qualifications, abilities, resources, performance examples, and other information related to the proposer's declared area(s) of expertise. Each proposal should include the following basic components and information:

- A brief description of the proposer's professional experience, including public infrastructure project involvement and regulatory agency interactions.
- The specific engineering, geotechnical, or architecture disciplines for which the proposer wishes to be considered.

- A description of the proposer’s capability in providing the professional service(s) for the aforementioned disciplines
- A list of the key professionals with resumes including highlighted projects and their role, who will provide services in each discipline category listed in the proposal, and Oregon licensing information.
- The name and contact information for the primary contact person and team leaders and/or project managers.
- Other information that may assist the City in making its selection of qualified professionals.
- A fee schedule (list of hourly rates). List each member or classification and their normal billing rates. Indicate the dates for which the indicated rate schedule will be effective and describe how rate adjustments are to occur. Rate adjustments shall not be made more frequently than annually.
- A statement confirming the proposer agrees to abide by the conditions of the City’s Professional Services agreement attached to this RFP as Attachment A.
- A statement verifying that the proposer has the ability to provide insurance coverage as follows:
 - 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.

4.3 Specific Proposal Sections and Requirements

4.3.1 Introductory Letter (10 points)

Each proposal shall include an introductory or cover letter. The consultant may use this section to introduce the proposal and the key provisions of the submittal.

The introductory letter shall include, but not be limited to the following information:

- The name of the firm
- Signature, printed name, and title of a company officer who is authorized to represent the firm.

- Address, phone, email, and other contact information for the firm.
- Federal and state tax ID numbers.
- The following statement: *"The consultant accepts all the terms and conditions contained in the Request for Proposals and that this proposal shall be considered valid for 120 days after the submission deadline."*
- The following statement: *"All materials and documents acquired or produced by the consultant in conjunction with a resulting contract shall be delivered to and become property of the City of Newport without restriction or limitation of their future use."*
Please note the requirements pertaining to confidential information in section 3.7 of this RFP.

4.3.2 Understanding and Approach (30 Points)

The *Understanding and Approach* section is designed to communicate Proposer's preparation and expertise in each discipline category they declare. Include descriptions of Proposer's knowledge as it relates to each discipline category in a general sense. Any knowledge or information specific to Newport should be summarized. Proposer should also describe his team's experience performing similar tasks and the chief issues considered in the work.

Proposer should illustrate an understanding of common approaches and techniques for each discipline category. It is important that the proposer demonstrate an ability to synthesize technical information and communicate this information in verbal, written or graphic form.

Proposer should outline the approach to an example or specific project and how key issues were or would be identified and addressed. Summary should include a brief description of major tasks to be completed as well as resources proposed to complete each task.

Potential elements to this section include:

- Proposer's overall approach to one example project from the declared category(s).
- A general work plan that describes how the proposer will organize and conduct a task. Identify critical milestones and major phases for a particular activity.
- A description of the proposer's approach to and methodology of managing workload, coordination, sequencing and control of resources, and how projects will be tracked and kept on schedule.
- A description of how the project team will interact with City staff and what level of support will be anticipated or expected from the City.
- A description of Proposer's process for managing scope, schedule, and budget issues.

This list should not be considered complete and the consultant should include other aspects Proposer considers important.

4.3.3 Key Personnel Qualifications (30 Points)

Proposal should include information on key personnel who will be assigned to City projects. Relevant information for individuals should include education, training, experience, certification, and demonstrated excellence in their particular field.

Potential areas that should be addressed in the proposal with regard to personnel include:

- An organizational chart listing all key people and illustrating the lines of communication.
- A list of the project principal, project managers, discipline leads, key staff, and sub-consultants to be utilized to provide services, and a list of their typical duties.
- Qualifications, registrations, certifications, and relevant individual experience of key personnel, including sub-consultants.
- A list of each project manager's experience with managing interdisciplinary teams and working with public agencies on public infrastructure projects. Include pertinent project examples and role of the individual in each project.
- A description of the proposer's ability to deliver projects on time and within budget.

4.3.4 Consultant Team References and Past Performance (30 Points)

Provide a project history for all relevant project categories where the project team has completed similar or related work.

The response information for this section may include the following:

- Description of similar projects, by name, scope, location, and date, performed within the last 5 years which best characterize work quality and the capabilities of the Proposer. Detail the type of work that was done that supports the proposition that the team is capable of performing similar work.
- A public agency client list including contact names and phone numbers for projects undertaken in the last five years or the last 10 clients, whichever is least.
- A description of specific experience understanding design and construction oversight of relevant projects.
- A description of the Proposer's ability to deliver projects on time and within budget.

The Proposer's past performance on City projects will also be considered in this scoring section, if applicable.

4.3.5 Fee Schedule (Pass/Fail)

Provide a fee schedule outlining a list of the commonly recommended key personnel, staff categories, individuals, or sub-consultants making up the project team. Include a forecasted 2021 listing of individual billing rates that would be used for the 2021 calendar year.

4.3.6 Support Information (No points)

The proposer may provide supporting material that it believes will assist the Selection Committee in the decision process. Only relevant information should be submitted. Items that may be included in the Appendix as support material include:

- Graphs and figures.
- Additional resumes beyond key staff.

- Additional references.
- Project photos.
- Insurance certificate.

If the consultant does not wish to include support information in the Appendix, please include a page indicating that *"No additional support material has been provided."*

4.4 *Summary of Selection Criteria*

This section shall summarize the selection criteria that will be used for selecting those entities that the City will contract with. The table below summarizes the criteria that will be utilized:

Content and Evaluation Criteria	Maximum Score Possible
Introduction Letter (4.3.1)	10
Project Category(s) – Understanding and Approach (4.3.2)	30
Key Personnel Qualifications (4.3.3)	30
Consultant Team References and Past Performance (4.3.4)	30
Fee Schedule (4.3.5)	Pass/Fail
Support Information (4.3.6)	No points
Total	100

ATTACHMENT A

DRAFT CONSULTANT OF RECORD PROFESSIONAL SERVICES AGREEMENT <CONTRACT NAME>

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and _____, a <STATE> corporation, which is registered to practice <DISCIPLINE> in the State of Oregon (Consultant).

RECITALS

- A. Pursuant to City Rule 137-048-0220, the City of Newport (City) solicited proposals for professional Consulting services to assist the City in _____.
- B. After reviewing all proposals, the City has selected _____ (Consultant) as a Consultant of Record 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 _____
The City is free to utilize other Consultants or consultants 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 \$_____. 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 sub-consultant 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.

ATTACHMENT 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

ATTACHMENT A

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

ATTACHMENT A

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.

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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

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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

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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 <DISCIPLINE> profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a 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 save and hold harmless 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

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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,

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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:

Chris Janigo, PE
Interim City Engineer
City of Newport
169 SW Coast Highway
Newport, Oregon 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

ATTACHMENT A

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

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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

Chris Janigo, PE
Interim City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365
541-574-3366
c.janigo@newportoregon.gov

IF TO CONSULTANT:

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.

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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 659.425, 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

The Agreement is subject to Oregon law. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court in Lincoln County, 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, B & C. 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 instrument shall control in the event of any conflict between 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.

ATTACHMENT A

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'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, Consultant agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the

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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 – Fees;
- B. Exhibit B – Oregon Public Contracting Code/required contractual provisions
- C. Exhibit C – Consultant of Record 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 sub-contractors appropriate provisions as required by ORS 279C.580.
- D. Consultant will comply with environmental and natural resources regulations as set forth in ORS 279B.525 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 270C.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:

Spencer Nebel, City Manager

Date: _____

<CONSULTANT>:

By: _____

ATTACHMENT A

Its: _____

Date: _____

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EXHIBIT B

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, co-partnership, 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.

ATTACHMENT A

- (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.



Introductory Letter

December 15, 2020

Chris Janigo, PE, Acting City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365

Dear Mr. Janigo,

HDR has been serving the City for over a decade, starting with delivery of the new wastewater treatment plant. We are dedicated to the City's success and bring the following benefits to this project:

- **Staff with direct experience working with the City of Newport.** HDR has worked with the City on numerous projects including the new Water Treatment Plant, GAC expansion and standby generator addition, optimization report for the solids handling facilities at the wastewater plant, working closely with the Grants consultant of record to provide technical expertise, and serving as the Dam Consultant of Record.
- **Ability to provide most requested Civil and Other services under one roof.** Our philosophy is to be an expertise-driven, professional services firm that delivers tailored solutions through a strong local presence. HDR has the advantage of being able to provide full-service civil engineering solutions and other related professional services for the execution of your Capital Improvement Plan projects with a strong group of engineering, construction management, planning, and natural resources personnel all located in HDR's Portland office. As we have demonstrated, HDR also has the flexibility to come to Newport on demand when there is a need for an engineer on site.
- **Extensive regional staff resources.** Supporting our local team, HDR has deep resources in the Northwest - over 1,100 staff that the City can access quickly and efficiently to serve your community's needs. These experienced staff are backed by the firm's national resources of over 10,000 personnel. Our ability to access company-wide resources and expertise is a great strength that you can use to meet your project needs.

With our proven dedication to the City, ability to meet schedule and budget demands, technical expertise, and client-service philosophy, HDR will be your partner for success. The consultant accepts all the terms and conditions contained in the Request for Proposals. Though, HDR has reviewed the City's Professional Services Agreement contract and respectfully requests the opportunity to discuss potential changes to the contract. Our intent in requesting changes is for the contract to be consistent with our insurance coverage to protect the interests of both the City and HDR. Our proposal is not conditioned on acceptance of any proposed changes. This proposal shall be considered valid for 120 days after the submission deadline. All materials and documents acquired or produced by the consultant in conjunction with a resulting contract shall be delivered to and become the property of the City of Newport without restriction or limitation of their future use. HDR will abide by the conditions of the City's Professional Services Agreement and can provide insurance coverage as required.

Please feel free to contact Verena Winter at 503.423.3756 if you have questions regarding our submittal or would like more information about HDR and our commitment to serving Newport.

State of Oregon Tax ID: 009682288-64, and Federal Tax ID: 47-0680568.

Sincerely,

HDR Engineering, Inc.

Tracy Ellwein, PE
Vice President and Oregon Area Manager
Tracy.Ellwein@hdrinc.com

Verena Winter, PE
Contract Manager
Verena.Winter@hdrinc.com

Understanding and Approach

Overall Approach and One Project Example Per Category

Based on the City's discipline categories identified in the RFP, HDR Engineering, Inc. provides comprehensive civil engineering services that include water treatment and distribution, wastewater treatment and collection, transportation engineering, street and storm sewer engineering, and other related services such as public involvement, environmental permitting, and operational optimization of treatment plant processes.

These inclusive services allow the City to quickly identify workload and/or critical infrastructure project needs and draw upon our team's depth of resources that are available at the City's request. Our team has worked together on numerous projects and are well versed in their fields. HDR's Contract Manager, Verena Winter, has successfully worked with the City on other projects over the last 11 years and understands the City's needs.

Project Example

Starting mid-May 2020, the City of Newport, Oregon experienced a rapid change in water production leading to an emergency four weeks later that caused a citywide water curtailment. Despite being able to fully recover the membranes through modified cleaning cycles, the membranes continued to foul and lowered the plant capacity after only a few hours of post cleaning operation. Independence Day weekend is a major tourist weekend for the City and instead of the normally 4.5 MGD only about 1 MGD could be produced. Fish processing factories, breweries, and other industries had to be shut down for two weeks to reduce demand.

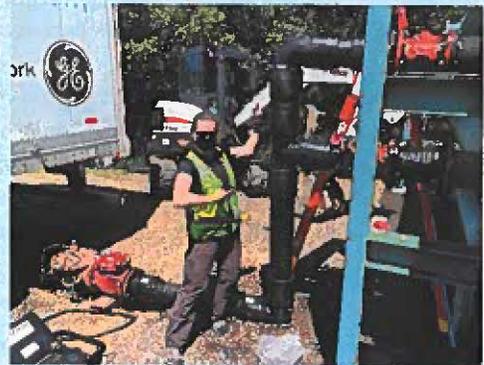
To address the issue, the membrane manufacturer (Pall) and HDR worked together to identify the problem. The raw water quality was analyzed, and unusually high iron and manganese levels were discovered. Comparisons to previous years were made and a trend in poor raw water quality was discovered at that time of the year with still no explanation why it caused such a demand issue in this high-water demand season. The WTP could not be shut down due to the low production. It was impossible to pin down the problem without taking the membranes offline. For that reason, the City and HDR worked with SUEZ to obtain and install two trailer-mounted packaged treatment units that provided the City with enough water to curtail water restrictions. These temporary trailer units were pressurized sand filters that could produce up to 1,000 gallons per minute for each unit. That provided the opportunity to shut down part of the WTP to examine the problem.

Meanwhile, the team turned over every stone to find the root cause of the fouling issues. One membrane module along with a 5-gallon bucket of raw water was shipped to New York State to Pall's laboratory for cleaning testing and a membrane autopsy to see what is plugging the fibers. Other items that were examined at the WTP were the flocculation process and contact time. Different membrane cleaning recipes were implemented, including a 19-hour soak for the membranes.

This project demonstrates HDR's and Verena's commitment to the City and how much we value this relationship. We will continue to provide these and other services to support Newport's municipal infrastructure needs.

"A special thanks to Verena Winter with HDR Engineering whose quaint German accent, force of will, and Mount Everest personality keeps HDR Engineering and Pall Corporation working toward a permanent membrane filter plant recovery."

- Tim Gross, Former PW Director City of Newport, OR



Citywide water curtailment in Newport June 2020 – unusual raw water quality led to water production issues. Verena led HDR's efforts to set up a temporary treatment system in two weeks and support the City to fix the issue.

General Workplan with Milestones and Major Phases

Developing a solid management plan is critical to the success of your projects. We are committed to meeting and exceeding your expectations, which will be directly connected to the schedule and budget of your projects. We have gained valuable knowledge through our previous project experience with the City and meetings with City engineering and management staff to improve our level of service. As part of this effort, we have developed a plan with a project management and team structure based on input from the City that we believe will further improve our level of service and responsiveness. We will also employ several tried and tested tools that we have found to be successful in managing scope, schedule, and budget on past projects. We have taken great care in defining and developing a proper plan to managing your civil engineering contract. Our general work plan approach is illustrated in Figure 1; additional details include:

- A **primary point of contact** and secondary contact that will be accountable and focused on technical competence, cost, and schedule control.
- **Senior professionals** independently responsible for Quality Control (immediately available to provide input and technical review).
- A **flexible organizational** concept that will be refined and optimized based on actual contract requirements.

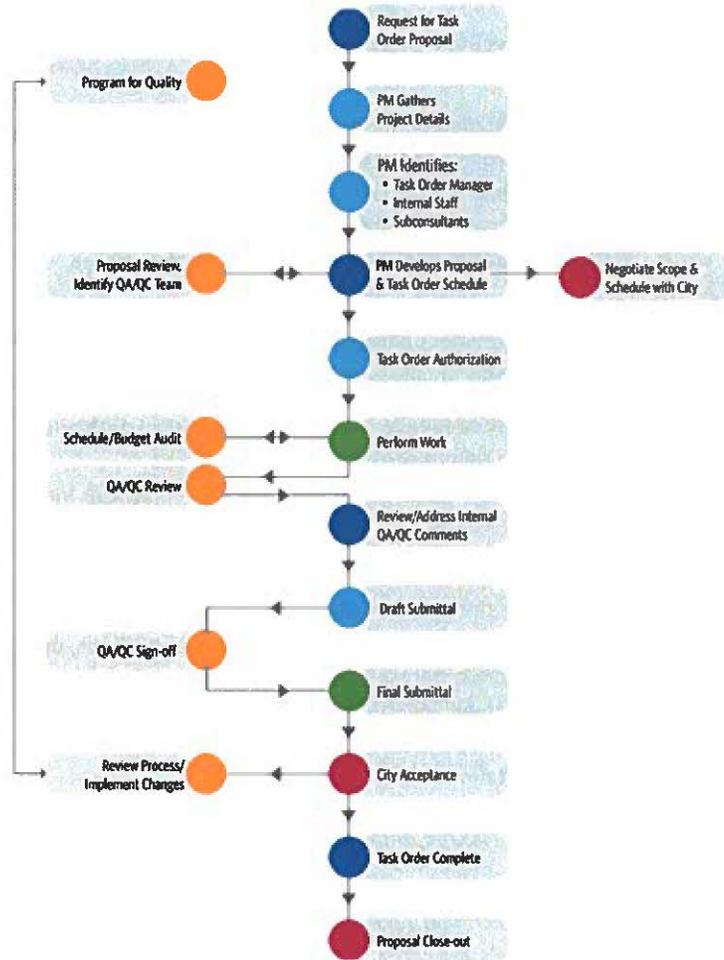


Figure 1 General Workplan Approach

Approach and Methods of Managing Workload

Ability to Handle Projected Workloads

The HDR team is assembled specifically to respond to the City’s civil engineering projects through the allocation of qualified and adequate resources at the right time over the duration of the project. One of the identified realities of any project is that resource needs will vary significantly over the life of the project, and HDR’s Work Plan is a proven tool for developing a resource-loaded project schedule and managing workload. The resource requirements for every HDR project are loaded into Work Plan where specific individuals are assigned with corresponding job-hours in conjunction with the project schedule.

Managing our Role on the Project

HDR will employ resources from our Portland office and draw upon regional resources if necessary. We have assembled a team that leverages deep civil design experience with local resources who understand the City and local community issues. HDR has proven successes, collaborating with the City on previous large and complicated projects.

Control Project Schedules

Controls and scheduling are powerful tools when used aggressively to drive the City’s civil engineering projects to successful on-time completion. Early identification of forecasted schedule variations allows the City and HDR team to make informed decisions and, where necessary, perform mitigation actions early in a project. Establishing schedule controls using Work



Breakdown Structures and resource loaded schedules defines the path for project success and supports the monthly review of project budgets, commitments, actual costs, and schedule status.

Successful project execution depends on constant communication of schedule issues and control of the design process, which allows the City and HDR team members to:

- Develop a detailed understanding of the necessary tasks and work packages
- Anticipate project and resourcing needs
- Monitor/adjust individual task and work package schedule durations in response to actual expenditures and durations of completed tasks
- Examine issues and related impacts before they occur

The schedule for this Project will be developed and maintained using Microsoft Project, which is fully compatible with the City's system. The schedule is based on the task and work packages in conjunction with resource loading using Work Plan. Verena will work collaboratively with the team to:

- Structure task sequence to minimize the critical path and unnecessary dependencies
- Leverage the right mix of the team's resources
- Provide time and dependencies for external activities including City and stakeholder review of scheduled deliverables
- Provide time for statutory requirements for permit reviews and related third party activities.

As part of her management responsibilities, Verena will obtain monthly cost and schedule information from HDR's project dashboard and coordinate with major task and discipline leads, update actual costs measured against planned expenditure rates, and monitor work progress against the baseline plan using Earned Value methods. Monitoring these components throughout the project will identify trends and allow adjustments in resources and tasks to drive on-time and within budget completion. The schedule will be monitored continuously, and a monthly formal schedule update will be submitted as part of the invoice documentation.

Description of How Project Team Will Interact with the City

The City's interaction with the HDR team is critical to project success. Effective communication and City interaction must be tailored based on two critical elements: Project size and type and City stakeholder preferences

Project Size and Type

Different projects require different interaction. For example, the design of a water storage tank would not require as much interaction from the City as the design of a park. The City would be involved in the water storage tank design as much as they would like, whereas for a design of a park, the City would be heavily involved with every step. After the initial communications with maintenance staff and operators for certain elements (i.e., access ladders or access hatches), HDR would take the project to a conceptual design level (60%) and present it to the City for review and comments. HDR would incorporate the comments and move on to final design. Pending tank design complexity and the comments received after 60%, there might be another review at 90%. If there are any questions, communication with the City via email or phone will occur to obtain answers and move forward with design.

City Stakeholder Preferences

Some people prefer a phone call or a short email while others would like to see the details. Verena is familiar with the different communication styles of the City staff and will adapt to new staff by meeting with them right away. Some clients want a quick update, brief list of the details, and proposed solution to decide and/or to approve a certain item. Others may want a lengthy email and an additional phone call with details and explanations to decide. Verena is respectful of her Client's time and will adapt to preferences as appropriate. By nature, operators want more information before deciding as they are the ones that will have to live with whatever is designed or installed. Operators need to know what other options are out there to see what will fit their needs best. For that reason, communication and involvement with the operators will be more detailed and specific.

Process for Managing Scope, Schedule and Budget

Project Management

Effective project management is a key element of project success. Our Contract Manager, Verena Winter, has led numerous multi-disciplinary projects, coordinated teams small and large, and provided leadership through clear communication and coordination to guide and manage her team’s work. HDR has effective, proven strategies and tools for managing our team to deliver projects on time and within budget. Below is a summary of our processes.

PROJECT MANAGEMENT PLAN (PMP)

On all projects, whether they are studies, or preliminary or final designs, we will first develop a PMP that includes the scope, schedule, budget, project team, communication plan, QA/QC plan, risk management plan and list of deliverables. HDR will share the PMP with all City staff for use as a reference during project execution. HDR updates and maintains this plan throughout the life of the project.

PROJECT TASK ASSIGNMENT SCHEDULE

We understand the importance of project tracking and staying on schedule. Our standard, for every project, is to develop a master schedule that will include milestone dates and a detailed baseline Gantt schedule with task dependencies for each work assignment. The team will use the following techniques to determine progress:

- Organize each project into manageable and clearly defined work tasks and deliverables.
- Maintain communication between the City Project Manager and HDR’s Project Manager.
- Lead regularly scheduled team meetings on each work assignment.
- Prepare monthly updates of work assignment progress versus budget and schedule using earned value reports.

QUALITY CONTROL (QC)

HDR’s Quality Program focuses on the proactive use of quality assurance (QA) procedures, coupled with comprehensive QC reviews of project deliverables to verify that the scope, schedule, budget, and deliverables are consistent with project goals. The QC part of the program establishes a specific plan for technical reviews of each deliverable by qualified senior reviewers who were not involved in preparing the deliverable. These reviews include formal documentation and resolution of reviewer comments prior to submitting the deliverable to the City. The QC Plan includes the reviewers, the scheduled dates, the types of reviews required, and the reviewer budget, and is illustrated in Figure 2, below.

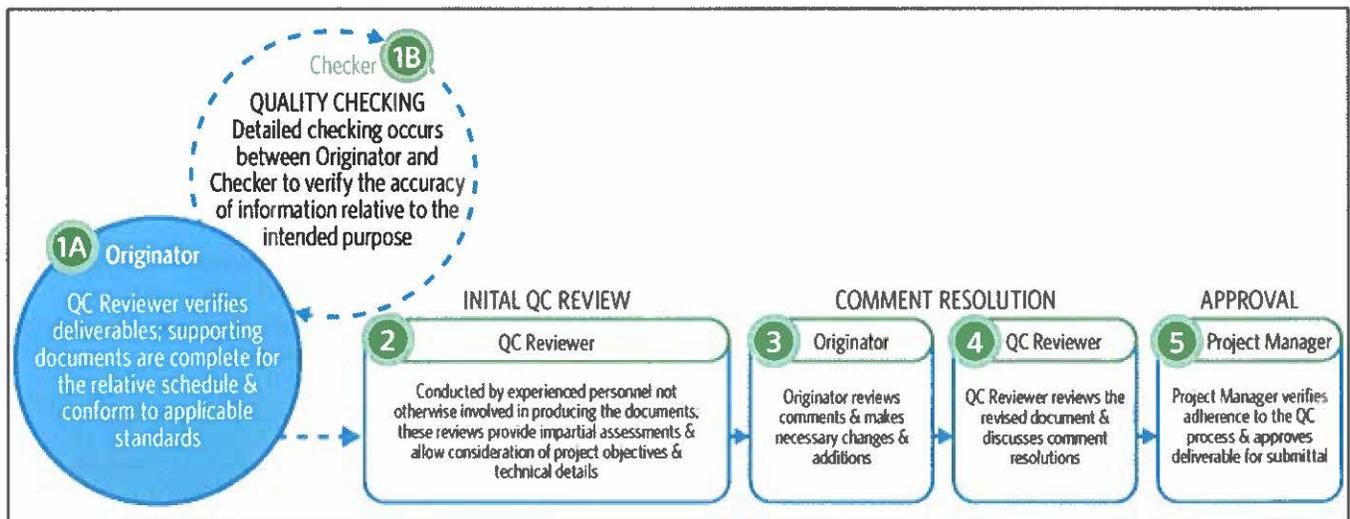


Figure 2 HDR's Quality Control Process

Key Personnel Qualifications

Organizational Chart Listing Key People and Lines of Communication

Our firm’s philosophy is captured in our brand promise to do the right thing to make great things possible. Our Contract Manager, *Verena Winter*, has worked with the City over the past eleven years and consistently delivered high quality projects. She brings the support of local discipline leads that covers the full breadth of services under the Civil Engineering category, see Figure 3 for our Organizational Chart.

Our contract and water/wastewater treatment project manager, Verena Winter, will be supported by a diverse group of professionals including Brian Reis and Paul Woerrlein who can support Verena and the City. Our team brings along additional technical advisors, design leads, and support staff members who will collaborate to meet the City’s civil engineering needs and standards. The table below provides our team members, civil engineering areas of expertise, and typical duties.



Figure 3 Organizational Chart

Team List and Typical Duties

STAFF NAME & ROLE	REGISTRATIONS/ CERTIFICATIONS	EDUCATION	TYPICAL DUTIES
Verena Winter, PE <i>Contract Manager, Water/Wastewater Treatment Project Manager</i> Contact Info: Verena.Winter@hdr inc.com, (503) 423-3756	Professional Engineer, Environmental: OR Certificate, Hydrology, Portland State University	MS, Civil and Environmental Engineering, Portland State University BS, Management for Construction, Real Estate, and Infrastructure, Bauhaus University	With over 17 years of experience, Verena has successfully managed many water and wastewater treatment plant design projects as well as dam projects. Her experience includes treatment plant upgrades and expansions for several clients including the Cities of Newberg, Silverton, Coeur d’Alene, and Portland. Verena served as Project Manager during construction of the Newport WTP and is Contract Manager for the Dam Services On-Call. As the Contract Manager for Newport, Verena will continue to orchestrate the engagement of her team of experts, bringing in the right people for the right task.
Paul Woerrlein, PE <i>Civil Engineering Project Manager</i> Contact Info: Paul.Woerrlein@hd rinc.com, (503) 423-3752	Professional Engineer, Environmental: OR	BS, Civil Engineering, Portland State University	Paul is HDR’s Dams, Levees, and Civil Works lead for Oregon, and specializes in civil works projects, dam and levee evaluations, interior drainage analysis, stream and wetland restoration, and construction oversight.



STAFF NAME & ROLE	REGISTRATIONS/ CERTIFICATIONS	EDUCATION	TYPICAL DUTIES
Brian Reis, PE <i>Surface Water Management Project Manager</i> Contact Info: Brian.Reis@hdrinc.com, (503) 423-3717	Professional Engineer, Civil: OR, TX	BS, Civil Engineering, Texas A&M University	Brian specializes in stormwater master planning and system design, flood, and scour studies that include detailed CIP development and cost estimating to meet clients' facilities needs and specific budgetary situations. He also performs hydrologic and hydraulic analysis. Brian's fieldwork includes routine construction inspection and preliminary field reconnaissance. During construction, he serves as a technical liaison, providing construction assistance and in-field solutions to the contractor and client representatives.
John Koch, PE, BCEE <i>Technical Advisor, Quality Control</i>	Professional Engineer, Civil: WA, ID, IN Board Certified Environmental Engineer, National Registration	BS, Civil Engineering, Indiana Institute of Technology	John's specialty is hands-on troubleshooting in functioning treatment plants and pump stations. With 46 years of experience, John has worked on several local projects including the Newport WTP renovation and others in Newberg, Bend, Silverton, and Beaverton. John designs improvements that work with current treatment systems and leverage existing infrastructure.
Kristi Nelson, PE <i>Pump Stations & Treatment Plant Design</i>	Professional Engineer, Environmental: OR, WA	MS, Civil Engineering, University of Washington BS, Civil Engineering, Oregon State University	Kristi brings 11 years' experience of water and wastewater planning and design. She supports master planning, process design, cost estimating, and alternatives evaluation, including onsite project startup assistance and implementation.
Dan Johnston, PE <i>Water/Sewer Pipelines</i>	Professional Engineer, Civil: OR	BS, Civil Engineering, U.S. Air Force Academy	Dan is a water and wastewater engineer with 20 years of experience including planning and construction management of pipeline and pump station improvements for flow diversions, capacity expansions, and to facilitate new development.
Mario Benisch, PE <i>Wastewater Process</i>	Professional Engineer, Environmental: OR	MS, Environmental Engineering, University of Stuttgart, Germany	Mario has evaluated and designed wastewater treatment systems for more than 50 treatment plants. As Wastewater Process Design Lead, Mario will focus on cost effective wastewater processes, treatment process design, and facility and master planning for the City.
Pierre Kwan, PE <i>Drinking Water Quality</i>	Professional Civil Engineer: OR, WA, CA, NM	MS, Civil Engineering, University of Washington BS, Civil Engineering, The Ohio State University	Pierre specializes in water system planning, design, and construction. His deep-water treatment expertise and familiarity with drinking water regulations, trends, and design options for compliance will provide the City with comprehensive decision-making confidence. Pierre's experience also encompasses advanced water treatment, conventional and membrane filtration, UV and chlorine disinfection, pretreatment, and corrosion control.
Lisa Tamura, PE <i>Hydraulic/Hydrologic Modeling</i>	Professional Engineer, Environmental: OR, WA, ID	MS, Env. Engineering, University of Southern California BS, Engineering, Harvey Mudd College	Lisa is an expert in using computer hydraulic models for stormwater, water, and wastewater planning and design. Hydraulic modeling programs: InfoWater, H2OMap Water, InfoSWMM, XP-SWMM, EPA SWMM, EPA NET, WaterCAD/ WaterGEMS, SewerCAD and InfoWorksCS.
Stephanie Serpico, PE <i>Roadway Design</i>	Professional Engineer: OR	BS, Civil Engineering, Penn State University Park	Stephanie brings 22 years of experience in transportation design including roadway and trail design. She is currently managing surface street roadway projects in Deschutes and Washington counties, and delivers ODOT projects as well.



Project Manager Experience

Verena is a skilled project manager, having led the design and construction teams for the City of Newport's new water treatment facility and intake design. Other project management experiences include the City's dam consultant of record for the seismic deficiencies of the existing Big Creek Dams and the City of Silverton digester upgrade. She has also managed the City of Newberg's wastewater treatment plant expansion. Verena will bring her ability to focus a group of experts to gain quick results and dedication to the City's success to this contract.

Verena's projects have included treatment plants, pipelines, pump stations, and intakes; all possible components of design solutions. Verena's insight will aid in keeping the team on-track to determine the design parameters and develop practical solutions. Highlights of her project management experience and similar projects are described below.

Dam Consultant of Record

Newport, Oregon

Role: Project Manager. In 2009, HDR designed a new drinking water treatment facility for the City. Originally, the design involved modifying the intake structure to accommodate larger pumps and equipment. When a later geotechnical investigation indicated that the soil underneath the existing intake structure was very soft and unstable, the seismic stability of the dam was identified as a significant concern.

HDR performed an initial seepage, static stability, and post-earthquake stability analysis of Upper and Lower Big Creek Dams to understand the potential for large deformations and/or failure in case of a range of seismic events. Based on the results of the initial site investigation and analysis program, it was determined that additional site characterizations and engineering evaluations were required to improve the understanding of the subsurface stratigraphy, develop a geologic model of the site, and better estimate the corresponding engineering properties and behavior of the foundation and embankment soils. Our subsequent investigations indicated that both dams could be susceptible to severe damage during even a moderate seismic event, which would compromise the City's only drinking water source.

Water Treatment Plant Improvements

Newport, Oregon

Role: Project Manager. HDR provided predesign, final design, bid support, and construction observation services for the City's new water treatment facility. A new membrane water treatment facility capable of treating 6 MGD (expandable to 10 MGD) replaced the existing 4 MGD plant. The total project budget fell just under \$20 million.

During construction, it was discovered that the reservoir dam is on unstable soils. A dam assessment was conducted by HDR to determine the extent of the problem in case of a seismic event. Because of the unstable soils, the existing pump station could not be renovated. Instead, a new 6- to 10-MGD intake pump station was designed on an expedited schedule (delivered within one month) and constructed within two months.

As Project Manager, Verena led the project design for both the treatment plant and intake pump station, facilitated the CM/GC procurement, provided construction-phase engineering services, and assisted with start-up.

Wastewater Treatment Facility Upgrade

Silverton, Oregon

Role: Project Manager. The City of Silverton operates an advanced wastewater treatment facility rated at a maximum monthly flow of 6.6 MGD. HDR designed major improvements in the late 1990s that included a new activated sludge system. The plant provides reclaimed water to the nearby Oregon Garden, where the water flows through a series of constructed wetlands and provides irrigation water used throughout the site.

Verena provided construction phase engineering services for the digester upgrade, which included both the renovation of the two digesters and a new building for the controls and pumps. She partnered with the contractor and client to find solutions to renovation related topics and maintain the project schedule and budget.

Scoggins Dam Improvements

Clean Water Services, Oregon



Role: Project Manager. Scoggins Dam is an embankment dam located near the city of Forest Grove, Oregon, about 25 miles west of Portland. The dam provides irrigation water and water for municipal and industrial uses. Scoggins Dam was completed in 1975, has a height of 151 feet, and holds the reservoir called Henry Hagg Lake. The dam is owned by the Bureau of Reclamation (Reclamation) and operated by several different agencies.

The foundation soil of Scoggins Dam is liquefiable and proposes a danger of failing during a seismic event. Clean Water Services (CWS) hired HDR to help model and design a dam raise for future storage and to work with Reclamation on implementing the raise into their structural seismic improvements of the dam. Different alternatives are being modeled to simulate a seismic event with the subsequent failure behavior of the dam.

Ability to Deliver on Time and on Budget

The HDR team has a long history of on-time and within budget completion of similar projects. A great example is our team’s completion of the City’s Water Treatment Plant project. We monitor our project schedule and budget closely using earned value methods and adjust when needed. We maintain a resource loaded staff and project database called Workplan, so we can see our staff utilization.

If staff are projected to be overbooked during a given period, we make staff adjustments to make sure our project obligations are met. Verena, Paul and Brian are experienced, engaged, and astute project managers. They review workload and progress with staff on a weekly basis. We keep work products on the network and our PMs review their development against budget to make sure progress is on track adjusting as necessary to keep project progress on schedule and within the budget.

Consultant Team References and Past Performance

Similar Projects within the Last 5 Years

The following table lists projects that best characterize the work quality and the capabilities of the HDR team:

PROJECT NAME	SCOPE	LOCATION	DATE
City of Newport Big Creek Dam Project(s)	Scope elements for this ongoing project include preparing static and post-earthquake stability analysis of both existing dams, site investigations, geologic characterization, and safety evaluations to improve the understanding of the site geology and foundation and embankment soil behavior. An alternative analysis resulted in a recommendation to replace the two existing earthen dams with a single RCC dam. Components that are currently underway include environmental permitting work, a new access road, a new raw water pipeline to connect the dam outlet with the WTP conceptual design, and a 2D structural model development for the RCC dam.	City of Newport, OR	2010 - Present
City of Newport Emergency WTP Repairs	HDR was hired to perform on demand emergency water treatment plant (WTP) engineering support services as requested by the City of Newport including, but not limited to: troubleshoot the existing WTP treatment issues; provide assistance to the City over the phone and in person, if necessary; design temporary treatment unit connections and hydraulic requirements; review and analyze water quality data; and provide support for the temporary treatment unit.	City of Newport, OR	2020
City of Newberg Seismic Resilience Assessment	Evaluated the seismic vulnerability of the City’s Water System Backbone (treatment plant, transmission and system storage); provided capital improvement recommendations to mitigate seismic risk.	City of Newberg, OR	2018/2019



PROJECT NAME	SCOPE	LOCATION	DATE
City of Ashland Water Treatment Plant Design	Design of a new water treatment plant range from an evaluation of treatment alternatives and preliminary design to final engineering, permitting, and bidding support through final construction.	City of Ashland, OR	2019 - Present
City of Astoria Water System Master Plan	Services include developing a hydraulic model, demand forecast, consumption analysis, and associated master plan requirements; seismic resilience assessment to meet OHA requirements, and a Risk and Resilience/Emergency Action Plan to meet the America’s Water Infrastructure Act.	City of Astoria, OR	2019 - Present

Public Agency Clients

Some of HDR’s public agency clients include:

PUBLIC AGENCY CLIENT LIST		
Client Name	Contact Name	Contact Phone
City of Newport	Chris Janigo	541-270-7515
TVWD/WWSS	Joelle Bennett	503-349-7236
Portland Water Bureau	Jerry Pierce	503-707-4310
City of Astoria	Jeff Harrington	503-338-5177
City of Newberg	Brett Musick	503-554-1631
Portland BES	Paul Suto	503-823-7740
EWEB-Hydraulic Modeling/RRA	Nathan Endicott	541-685-7367
Clean Water Services	John Dummer	503-681-4448
City of Vancouver	Michelle Henry	360-487-7155
City of Ashland	Kevin Caldwell	541-552-2414

Description of Experience Understanding Design and Construction Oversight

Oversight is an important aspect during construction to implement the constructed structure as designed and meet the design intent. Construction engineering services is the connection piece between the contractor and the design engineer in which the design engineer represents the City’s interest and needs. The construction of the Newport water treatment plant is a good example how HDR demonstrated the ability to provide excellent engineering services and oversight during construction. Many unexpected items arose during construction from the soil foundation stabilization of the treatment plant to the discovery of liquefiable soil at the existing intake and the subsequent redesign of a completely new intake structure while construction was in full swing. During start up, there were many issues with the programming and correspondence between the membrane manufacturer who oversaw the programming and the construction team. Verena and the construction team were able to overcome the difficulties in communication and prove that the job was well done on the contractor’s side resulting in the City receiving money back from the membrane manufacturer for not fulfilling their contractual obligations.

In summary, no design or contractor is perfect. Verena was able to build a level of trust with the contractor resulting in potential conflicts during construction being discovered and brought up before implementation. Together with the contractor, Verena found solutions to problems while managing the budget closely. And every problem was brought to the City’s attention at the weekly construction meetings to inform and obtain approval. Construction oversight not only includes submittal and RFI reviews but also communication, trust, and people skills to make it a successful project.

Delivering Projects on Time and Within Budget

Successful project management requires comprehensive planning and disciplined execution. As a guide, HDR will create a comprehensive Project Management Plan for each Task Order. Throughout execution, we will use many tools to efficiently



perform the work, monitor our conformance with the baseline plan, and implement corrective actions, as needed. Our approach and key project management tools and their benefits include:

- **Communication and Project Meetings** | Interactive workshops/meetings provide participants a better understanding of issues, help to anticipate and resolve constraints, and lead to creative solutions and consensus among participants.
- **Cost Control** | HDR’s contract manager, Verena Winter, has a stellar record of completing projects at or below budget, as demonstrated on projects performed for the City of Newport (Dam Consultant and Wastewater Treatment Improvements), City of Cottage Grove (Wastewater Treatment Optimization), and City of Silverton (Wastewater Treatment Upgrade).
- **Schedule Control** | Advanced scheduling will save time for key decisionmakers and agency participants and help keep the project on schedule.
- **Effective Quality Management** | Quality products to the City.

Fee Schedule

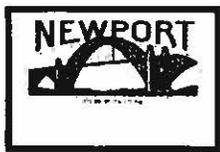
Category	Billing Rates
Principal In Charge	\$295.20
Sr. Project Manager	\$253.18
Project Manager	\$179.38
Technical Advisor II	\$395.65
Technical Advisor I	\$300.33
Engineer V	\$274.70
Engineer IV	\$231.65
Engineer III	\$211.15
Engineer II	\$174.25
Engineer I	\$147.60
EIT	\$115.83
Planner/Scientist IV	\$189.63
Planner/Scientist III	\$169.13
Planner/Scientist II	\$142.48
Planner/Scientist I	\$115.83
Project Technician IV	\$174.25
Project Technician III	\$152.73
Project Technician II	\$121.98
Project Technician I	\$90.20

Notes: Rates valid through December 31 of each year, after which they will be adjusted for the CPI-U Western Region

Support Information

Please see attached resumes for support staff.

4014



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: Consultants of Record Agreements — *Water Systems Consulting*
Date: 6/2/21 *Brown + Caldwell*
HDR
Stantec Consulting Services

Statement of Purpose: Agreements for 3 years of consulting services. 4 agreements

Department Head Signature: [Signature]

Remarks, if any: David and CIS already reviewed.

City Attorney Review and Signature: [Signature] Date: 6/05/2021

Other Signatures as Requested by the City Attorney: _____

						Name/Position	
						Date: _____	
Budget Confirmed:	Signature	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>5/17/21</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: 6/4/2021

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: [Signature] Date: 6/14/2021

Date posted on website: 6/21/21

