



REQUEST FOR PROPOSALS

GOODS AND SERVICES – Intermediate Procurement

On-Site After-School Services

ADVERTISEMENT DATE: May 19, 2021

PROPOSALS DUE:
Wednesday, June 9, 2021, by 2:00 PM, Pacific Time

Address Proposals to:

Susan Muir, Parks and Recreation Director via email at susan.muir@mcminnvilleoregon.gov

Proposers must, submit an electronic Proposal by email to: susan.muir@mcminnvilleoregon.gov with “Request for Proposals – on-site after school services” in the subject line. Hard copy or faxed proposals will not be accepted.

The City of McMinnville reserves the right to reject any or all Proposals.

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Request for Proposals

The City of McMinnville, Oregon (“City”) is requesting Proposals in order to select a qualified organization to provide services for the On-Site After-School Program(s) (“Program”) at five McMinnville School District (“School District”) grade schools, with the potential to provide services at a sixth grade school. The City of McMinnville will contract with a provider for the five grade schools within the City limits of McMinnville. The City is currently working with the School District to determine whether, and if so, how an after-school program may be administered at an additional grade school that is outside the City limits. Interested organizations (“Proposers”) are invited to demonstrate their experience and qualifications in performing work directly related to the services required by responding to this **Request for Proposals (RFP)**. Proposals will be evaluated in accordance with the procedures of OAR 137-047-0270 except as otherwise noted in this RFP.

I. PROGRAM DESCRIPTION

A. Required Services – Grade Schools Within City Limits

The City invites interested parties to submit proposals to provide on-site after school services and programs to five School District non-charter elementary schools (collectively referred to as “the schools”).

Schools to be served:

Buel Elementary School
1985 SE Davis Street
McMinnville, OR 97128
Principal: Debbie Hilfiker
Enrollment: 535

Columbus Elementary School
1600 Fellows Street
McMinnville, OR 97128
Principal: Kathi Fowler
Enrollment: 525

Grandhaven Elementary School
3200 NE McDonald Lane
McMinnville, OR 97128
Principal: Stephanie Legard
Enrollment: 520

Memorial Elementary School
501 NW 14th St.
McMinnville, OR 97128
Principal: Kimberly Price
Enrollment: Not listed on web page

Newby Elementary School
1125 NW 2nd St.
McMinnville, OR 97128
Principal: Davey Altree
Enrollment: Not listed on web page

The purpose of the program is to deliver an enriching, enjoyable after school program format that blends academic instruction, homework, extracurricular activities, music, arts, recreation, physical education, and enrichment activities. Meals are to be provided five days a week from 2:30 p.m. to 6:00 p.m. on Monday - Friday. Programs will generally have access to common areas, cafeterias and recreation areas (outdoors and gymnasiums). Buildings and facilities will be available to providers at 2:15 pm.

The City of McMinnville and the School District are offering the use of facilities for no charge, and the School District is providing janitorial services, the reduction of these costs for the providers should ultimately be reflected in the tuition rates and or scholarship opportunities provided by Proposers. Proposers are being requested to consider offering ERDC (employment related daycare) federal funding, a sliding scale fee structure and scholarships for those families who cannot afford to pay full tuition to participate in the program but have demonstrated need for services. Once awarded, the City will expect the provider to work directly with the school principals on the academic instruction component of the program. The School District's Nutrition Services provider shall provide daily meals for the program at no cost.

The City will enter into a Contract for services with the successful proposer at each of the five schools to provide space on each school campus for the program. The School District will provide custodial support for the program at no cost.

B. Optional Services – Grade School Outside of City Limits

The City and the School District are currently working to determine whether, and if so, how to administer an after-school program at one grade school that is outside the City limits but within the School District's boundary. Proposers should include in their proposals whether they are able to provide services at this additional grade school. Proposers may have an opportunity to enter into a contract with either the City or the School District to provide services for this additional grade school depending on the outcome of negotiations between the City and the School District.

Wascher Elementary School
986 East 7th St.
Lafayette, OR 97127
Principal: Lauren Berg
Enrollment: 420
Contract Administrator: To Be Determined

Nothing in this RFP may be construed as requiring the City to contract for an after-school program at Wascher Elementary School. The City reserves the right to determine whether Wascher Elementary School is included in the scope of services in the Contract.

II. SCOPE OF SERVICES

The Scope of Services will be developed between the successful proposer, the City, and the School District based on the successful proposer's proposal and will be attached to the final contract. A Goods and Services Contract template is attached hereto as **Attachment A**. If the Proposer wishes to amend or modify any terms of the Goods and Services Contract, proposer is encouraged to submit such amendment or modification in the Proposal. Proposed changes to the draft Goods and Services Contract not stated at the time of Proposal submission may not be agreed upon by the City for contract award.

III. TERM OF PROGRAM

The City intends to enter into a three (3) year contract for services for the five school sites beginning fall 2021, with an option for the City, in its sole discretion, to extend the contract for up to three (3) additional one-year terms based on satisfactory service/performance. The intent of this Program is for the City to assign the resulting contract at the five schools inside the McMinnville City limits to the School District in the future.

IV. RFP DOCUMENTS

Request for Proposal (RFP) documents may be obtained electronically on the City website (<https://www.mcminnvilleoregon.gov/rfps>) under "Business" by clicking on "Bids and Requests for Proposals."

V. PROJECT MANAGER

The City's Project Manager shall be the sole point of contact for all questions, concerns, and protests. The Project Manager for this Program is:

Susan Muir
Parks and Recreation Director
(503) 434-7359
Susan.Muir@mcminnvilleoregon.gov

VI. MINIMUM QUALIFICATIONS

To be considered for award of the contract for this Program, each Proposer shall demonstrate the following minimum criteria as part of the Proposal.

1. Proposer shall demonstrate a minimum of five (5) years' experience providing the types of services described within the Program Description of this Request for Proposals for public agencies.
2. Proposers with a record of substandard service delivery, as verified by the City by communication with licensing authorities, former clients and references, and other means as the City deems appropriate, will not be considered.
3. Provide at least three written references from locations or organizations where similar services are provided. Provide business/school name, contact person, complete address, email address and phone number.
4. Provide a link to a Parent Handbook, or similar document.
5. Provide a link to a staff handbook, or similar document, if available.

VII. PROPOSAL REQUIREMENTS

Proposers shall prepare and submit Proposals in accordance with the requirements stated within this RFP. Adherence to these requirements will ensure a fair and objective analysis of submitted Proposals. Proposals should provide a clear, concise description of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be placed on completeness, brevity, and clarity of content. Failure to comply with or complete any part of the RFP may result in rejection of the Proposal. The ability to follow these instructions demonstrates attention to detail.

A. Proposal Format

Proposals shall be typewritten, with a standard body text font (e.g., Calibri, Times New Roman, Garamond) of at least 12-point.

B. Program Proposal

The proposal must succinctly and clearly address the following:

1. Describe your **history, vision, and philosophy** for after school care. Indicate the number of years you have provided services like those requested in the RFP. Describe your organizational structure. Provide your organizational chart.
2. Describe your organization's **qualifications and experience** providing services in after school or similar settings.
3. Proposal shall have the **name, title, and qualifications** of the proposed individual in their organization who will coordinate or supervise the program.
4. **Plan for delivery of services.**
 - a. What enrollment minimums do you require to operate the after-school programs?
 - b. Provide a sample lesson plan and daily program schedule.
 - c. How do you handle equipment, supplies, and consumables needed for program operations including storage?
 - d. What is your initial financial investment in program equipment and materials?
 - e. Describe methods used to communicate with parents of children in your program.
 - f. Describe how you provide program information to the project manager, principals, and other administrative personnel.
 - g. Describe how you collaborate and communicate with school site leadership and staff about the program and student needs.
 - h. Describe how you market the program to the school community.
 - i. Describe your supervision plan and the method used to account for and track the whereabouts of each student in the program.
 - j. Describe how you incorporate diversity, equity, and inclusion into your program.
 - k. Provide all relevant insurance verification, including a dollar value to which your company is covered.
 - l. Provide a timeline indicating steps required and time needed to establish the after-school program.

- m. Describe staff training and resources available to deescalate disputes and resolve differences and conflicts between students and between students and adults.
- n. Describe your willingness to offer a sliding scale of fees and scholarships for those families who cannot afford to pay full tuition to participate in the after-school programs but have a demonstrated need for services? Please provide details of your scholarship and subsidy programs how they would be implemented.
- o. Describe any customer service survey or satisfaction rating methods performed with stakeholders.
- p. Describe how you ensure appropriate accommodations of students with disabilities
- 5. Proposal shall include a staffing plan.
 - a. What are the required qualifications for each staff member involved with the program?
 - b. What staffing ratios will be employed?
 - c. What kind of training program do you have in place for staff members—both initial and ongoing?
 - d. How do you address potential staffing shortages (sick leave, vacancies, etc.)?
- 6. Program Budget and Program Fees; Complete and Include your proposed Fee Chart.
 - a. applicable) and tuition rates for this program? Please also indicate any registration fees or any miscellaneous fees (such as membership fees or supply fees).
 - b. Include tuition policies as communicated to families.
 - c. Submit a budget for the program.
- 7. Provide a draft Scope of Work to be attached to the contract for services.

C. Organization Experience

Proposals shall provide a brief work history of Proposer's and any subcontractor's Programs entailing the same type of work being requested. Emphasis should be placed on local Programs for public agencies where possible. The Proposal should include the following:

- 1. Describe the Proposer's organization size, office locations, and relevant capabilities and resources to be utilized on this Project.
- 2. Describe Proposer's and any key subcontractors' work experience that corresponds with the Project needs as identified in this RFP.
- 3. Provide at least three (3) examples of programs run by Proposer within the last five (5) years that best characterize Proposer's experience with the program being requested, describing each by Program name, type, location, and dates services were provided.
 - a. Include the agency or organization name and the name, address, telephone number, and email of the current contact person for each program, where possible.

D. Program Staff Requirements

- 1. The successful Proposer must have the appropriate child care license to operate the program and must meet the State of Oregon requirements for students to staff ratio.

2. The staff members must participate in a training program and receive ongoing professional development. Training topics may include child development, positive guidance, program quality, safety, curriculum and partnership building. Training in each school's approach to discipline and behavioral management is required and can be arranged with each principal. Information concerning the training programs must be made accessible to the City and McMinnville School District.
3. Administrators/managers will be available to conduct program visitations to assess program quality and provide additional resources and coaching for program staff.
4. Fingerprinting and background checks for all employees and volunteers must be completed before having contact with District students. The cost of fingerprinting and background checks is the responsibility of the successful Proposer.
5. The staff should be qualified and alert in their supervision. Staff members should be knowledgeable to address the needs of all students including students with medical needs and students with disabilities.

E. Supporting Information

Supporting materials may include graphs, full resumes, other references, charts, sample documents, and photos. However, pertinent information should be covered in the body of the Proposal. Brevity is encouraged. If there is no additional information to present in the Supporting Information, then state: *"There is no additional information we wish to present."*

VIII. PROPOSAL SUBMISSION

A. Proposal Submission Requirements

Proposers must submit an electronic Proposal by email to: susan.muir@mcminnvilleoregon.gov, with "Request for Proposals –on-site after school service" in the subject line.

Proposals must arrive at the inbox at the email address above by **2:00 p.m., Pacific Time, on Wednesday, June 9th, 2021.**

Late proposals, faxed proposals, or hard copy proposals will not be accepted.

IX. Proposal Evaluation and Selection

All written Proposals received via email by the deadline will be reviewed by a Selection Review Committee, which may seek input from other parties as the City deems appropriate. One or more finalists may be invited to an interview after the written Proposals have been reviewed.

At any point during the evaluation process, the City is permitted to seek clarification of any Proposal. The City retains the right to accept any or no Proposal that is deemed to best fit the needs of the City.

The Selection Review Committee will review and evaluate each submitted proposal. The evaluation will consider, but not be limited to, the following:

1. Quality of Program criteria: ability to meet the objectives of the City as described in this RFP.
2. Management criteria: review and analysis of the staffing plans, references, and overall program management.

3. Program fees and scholarship program criteria: cost to families utilizing the program will be considered.
4. Experience and qualifications criteria: Proposer's experience and success in managing similar programs.
5. Commitment to diversity, equity, and inclusion (DEI) criteria: A demonstrated connection between organizational values, practices and training related to making all kids feel welcome.
6. Miscellaneous: other factors, if demonstrated, to be in the best interest of the City and the McMinnville community.

After the City has reached final agreement with the Successful Proposer, the Selection Review Committee will make a recommendation to the McMinnville City Manager. The City Manager will then make the final contract award decision for, at a minimum, the 5 schools inside the City limits of McMinnville. The sixth school, Wascher Elementary School, may be included in the final contract depending on City negotiations with the School District, or may be contracted separately between the School District and the proposer.

X. SCHEDULE

The following is the anticipated timeline for receiving and evaluating Proposals and awarding a contract to the most qualified firm or individual. This schedule is subject to change as additional time is needed.

Advertise Request for Proposals	May 19, 2021
RFP Question Submission Deadline	June 2, 2021, 5:00 p.m.
Proposals Due	June 9 th , 2021
Interviews Scheduled (<i>if required</i>)	June 14 th , 2021
Evaluation of Proposals Complete	June 16 th , 2021
Notice of Award	June 22, 2021

XI. RFP QUESTIONS

Proposers shall direct all questions regarding RFP documents electronically to:

Susan Muir, Parks and Recreation Director
Susan.Muir@mcminnvilleoregon.gov

All questions shall include "RFP Questions – After-School Services" in the subject line or written on the front of the envelope and be submitted in writing by **5:00 p.m., Pacific Time, on June 2nd, 2021**. Questions received by June 2, 2021 by 5:00 pm and answers will be provided by June 4, 2021.

Proposers are hereby notified that verbal communication may not be relied upon as official communication concerning this RFP. Only answers to those questions responded to by the Project Manager via email or by addendum may be relied upon.

XII. GENERAL RFP INFORMATION

A. Contract Award

The City may elect to award the contract to the highest ranked Proposer based on successful negotiation of scope, and terms. However, the City may, in its sole discretion, terminate negotiations and reject the Proposal if it appears agreement cannot be reached. The City may then attempt to reach a final agreement with the next highest scoring Proposer and may continue on, in the same manner, with remaining Proposers until an agreement is reached.

The City will only negotiate those provisions of the contract that were noted as Exceptions in the Proposal.

B. Cancellation

The City reserves the right to cancel this RFP or the contract award or reject any or all Proposals at any time before execution of the contract by both parties if such cancellation or rejection is deemed to be in the best interest of the City. In no event shall the City have any liability for the cancellation of a contract award.

C. Late Proposals

All Proposals that are not received by the Proposal Due Date and Time will not be Faxed, mailed or hard copy Proposals will not be accepted. Delays due to email and/or delivery handling, including but not limited to delays within the City's internal distribution systems or email capacity, do not excuse the Proposer's responsibility for submitting the Proposal to the correct location by the Proposal Due Date.

D. Nondiscrimination

By the act of submitting a Proposal in response to this RFP, the Proposer certifies, under penalty of perjury, that ***the Proposer has not discriminated, and will not discriminate, against minorities, women, emerging small business enterprises, or business enterprises that are owned or controlled by or that employ a disabled veteran in obtaining any required subcontracts.***

E. Proposal Liability

Proposers responding to this RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP. By proposing, Proposers agree that doing so is at their own risk and the City shall have no liability related thereto. Finalists invited to participate in interview evaluations are responsible for scheduling and paying for their own travel arrangements. The City is not liable for any cost incurred by a Proposer in protesting any portion of the RFP documents or the City's selection decision.

F. City Requests for Clarification, Additional Research, and Revisions

The City reserves the right to obtain clarification of any portion of a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to timely respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

G. Duration of Proposal

Proposal prices, terms, and conditions shall be firm for a period of at least ninety (90) days from the time and date Proposals are due. Proposals shall not be subject to future price escalation or changes of terms during the ninety (90) day period.

H. Local and Federal Requirements

The City of McMinnville intends to select an organization in accordance with OAR 137-047-0270 and the City's municipal code. Selection of an organization under this process is not a guarantee of a contract award, nor is the award of a contract for any portion of the Work a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City of McMinnville.

ATTACHMENT A

SAMPLE GOODS AND SERVICES CONTRACT

CITY OF McMinnville GOODS AND SERVICES CONTRACT

This Goods and Services Contract (“Contract”) for the On-Site After-School Services Project (“Project”) is made and entered into on this _____ day of _____ 2021 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and _____, a(n) _____ [state] _____ [corporation/limited liability company, etc.] (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City requires services which Contractor is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Contractor is prepared to provide such services, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Contractor will perform the on-site after school services and programs to certain School District elementary schools, as more particularly described in the Scope of Services for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Services”).

Section 2. Term

2.1. The term of this Contract shall be from the Effective Date until all Services required to be performed hereunder is completed and accepted, or no later than _____, 20____, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Services according to the requirements identified in the Scope of Services.

2.2. The parties have the option to enter to three (3) one-year extensions of this Contract. The exercise of such option(s) will be provided by a written amendment to this Contract that is signed by both parties.

Section 3. Contractor's Rate

3.1. The true and actual consideration paid for this Contract by the City, stated in terms of dollars, is Zero Dollars but consists of or includes other property or value given or promised, which is agreed by the parties to be the whole and adequate consideration. Attached hereto and incorporated by reference herein is **Exhibit B**, which is Contractor's pricing for its services, to be paid by the users of its services ("Contractor's Rate").

3.2. Contractor's Rate is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, taxes, and all other indirect and overhead charges, as now exist or may exist during the term of this Contract.

Section 4. City's Rights and Responsibilities

4.1. The City will designate a Project Manager to facilitate day-to-day communication between Contractor and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

4.2. Award of this Contract is subject to budget appropriation. The City has approved scholarship funds for Fiscal Year 2021-22. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this Contract early, as described in **Section 11**.

Section 5. Project Managers

The City's Project Manager is Susan Muir. Contractor's Project Manager is _____.

Section 6. Subcontractors and Assignments

Unless expressly authorized in writing by the City, pursuant to **Subsection 8.1**, Contractor shall not subcontract with others for any of the Services prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Services may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

Section 7. Contractor Is Independent Contractor

Except as otherwise mandated by state law, the performance of Services under this Contract is at Contractor's sole risk. All damages or loss to Services, equipment, or materials incurred during the performance of the Services shall be at Contractor's sole risk. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contractor's Rate provided for under **Section 3** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Contractor's Services so such Services meets the requirements of the Project.

Section 8. Contractor's Responsibilities

8.1. The City understands and agrees that Contractor may request that some Services be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Services is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to "subcontractor" in this Contract mean a subcontractor at any tier.

8.2. Contractor must comply with all applicable Oregon and federal wage and hour laws. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

8.3. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as

amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

8.4. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Services provided for in the Contract.

8.5. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

8.6. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

8.6.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

8.6.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

8.6.3. All work performed on the days specified in ORS 279B.020(1)(b) for public contracts.

8.7. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Services on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

8.8. The hourly rate of wage to be paid by any Contractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

8.9. Contractor, and all employers working under the Contract, are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 unless otherwise exempt under ORS 656.126.

8.10. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources (and avoidance

of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. If new or amended statutes, ordinances, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection, which requires compliance with federal, state, or local laws or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

8.11. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any suppliers.

8.12. COVID-19 Safety Measures. Contractor must have a written policy in place to comply with all applicable local, state, and federal laws, regulations, and executive orders related to the COVID-19 coronavirus outbreak to ensure the protection of Contractor's employees and/or subcontractors, City employees, and the public. Contractor must provide its written policy to the City Project Manager at the commencement of the Project. In the event that Contractor is required to stop or delay work due to a COVID-19 related event, Contractor shall not be entitled to any additional payment, remobilization costs, or delay damages.

Section 9. Indemnity

9.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City and the McMinnville School District harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, the McMinnville School District, or any of their employees of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City or the McMinnville School District, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City and the McMinnville School District as provided above and to reimburse the City and the McMinnville School District for any and all costs and damages suffered by either as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 9.2.** Contractor shall defend the City and the McMinnville School District (using legal counsel reasonably acceptable to the City and the McMinnville School District) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor. As used herein, the term "Contractor" applies to Contractor and its own agents, employees, and suppliers, and to all of Contractor's subcontractors, including their agents, employees, and suppliers.

9.2. Standard of Care. In the performance of the Services, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will re-

perform any Services not meeting this standard without additional compensation. Contractor's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

Section 10. Insurance

10.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Services must have insurance that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Contractor must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

10.1.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

10.1.2. Business Automobile Liability Insurance. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Services herein, Contractor shall provide the City a certificate indicating that Contractor and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

10.1.3. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who

work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

10.1.4. Insurance Carrier Rating. Coverages provided by Contractor and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

10.1.5. Additional Insured and Termination Endorsements. The City and the McMinnville School District will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of McMinnville, its elected and appointed officials, officers, agents, employees, and volunteers," As well as "The McMinnville School District, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Services contemplated under this Contract.

10.1.6. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

10.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City and the McMinnville School District is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

Section 11. Early Termination; Default

11.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

11.1.1. By mutual written consent of the parties;

11.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person; or

11.1.3. By Contractor, effective upon seven (7) days' prior written notice, in the event of substantial failure by the City to perform in accordance with the terms through no fault of Contractor, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

11.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Services in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of three (3) days to cure the default. If Contractor notifies the City that it cannot, in good faith, do so within the three (3) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

11.3. If the City terminates this Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

11.4. Termination under any provision of this **Section 11** shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, for which Contractor has received payment or the City has made payment.

Section 12. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor.

Section 13. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of McMinnville
Attn: Susan Muir, Parks and Recreation Director
230 NE Second Street
McMinnville, OR 97128

To Contractor: _____
Attn: _____

Section 14. Miscellaneous Provisions

14.1. Integration. This Contract, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control.

14.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

14.3. No Assignment. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

14.4. Adherence to Law. This Contract shall be subject to, and Contractor shall adhere to, all applicable federal, state, and local laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Services described in this Contract shall be obtained and maintained throughout the term of this Contract.

14.5. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

14.6. Jurisdiction. Venue for any dispute will be in Yamhill County Circuit Court.

14.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to

seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

14.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

14.9. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

14.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

14.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

14.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

14.13. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

14.14. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

14.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Contract gives the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

14.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

14.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

14.18. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein represent the entire agreement between the parties.

14.19. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

14.20. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

CITY:

CITY OF McMinnville

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney
City of McMinnville, Oregon

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