

ADVERTISEMENT

Request for Proposals Architectural Services

The City of Vernonia has been awarded a Community Development Block Grant to complete Architectural design and related activities necessary to complete the final design, plans and specifications in preparation for construction of Rose Avenue Building. The City is seeking Proposals from qualified architectural firms to provide all necessary design plans, construction Documents, and construction management for development of the Rose Avenue Senior Center Food Bank Building.

The deadline for receiving qualifications is 3:00 pm on Thursday, December 1, 2016.

For further information call the City Administrator at City Hall 503-429-5291 ext. 106.

The process for submitting a Proposal is also on the city's web site at www.vernonia-or.gov. The City is an equal opportunity, affirmative action employer, does not discriminate because of race, religion, color, sex, national origin, marital status, age or disability, and invites Proposals from Section 3 qualified residents and businesses, minorities, women, and emerging small businesses.

CITY OF VERNONIA, OREGON

**Request for Proposals (RFP) for
Architectural/Engineering Services**

for

ROSE AVENUE SENIOR CENTER/FOOD BANK PROJECT

October 27, 2016

1.0 GENERAL INFORMATION ABOUT PROJECT

The City of Vernonia (City) was awarded a CDBG grant to design and construct the Rose Avenue building. This building will house the Vernonia Senior Center and Vernonia Cares Food Bank.

Design work and **construction management** under this contract will be funded in its entirety with federal grant funds from the Oregon Community Development Block Grant Program.

The purpose of this RFP is to select (through submission of a Proposal), a design professional or firm (Consultant) for the 30% iteration, 60% iteration, final design and **construction management** of the Rose Avenue building.

It is the responsibility of the Consultant to: 1) carefully review and assess the data provided and gather any new data that may be required; 2) utilize the supplied data and new data as required to supplement their planning, 30% iteration, 60% iteration and final design; 3) provide **construction documents, for bidding and construction specifications**, construction oversight: licensed Consultant will approve contractor pay requests and certify that the project is built according to approved plans; and 4) assist the City to see this project through to completion.

This RFP does not constitute a contract for services performed or to be performed. A City approved, criteria-based selection process will determine the successful Consultant.

A. Proposed Scope of Services.

Professional services may consist of:

1. Creating a 30%, 60%, and 90% iteration of the plans and construction documents for review and approval by the City and its representatives. This work product must also be acceptable in format to the City and any funding agencies.
2. Creating a final-design level document and associated plans for review and approval by the City and its representatives. This work product must also be acceptable in format to the City and any funding agencies.

3. Answering technical Requests For Information (RFI's) in a timely manner during construction related to the design; RFI's will need to be properly submitted to the City or its representative. The information for all reports and plans must be in digital format, fully compatible with versions of software used by the City and placed on CD, for use by the City, its consultants, and funding agencies. It is the responsibility of the Consultant to verify during the planning process and at the end of the project that data, reports, and plans are in acceptable formats.
4. Study, evaluate and update preliminary work done by others on the project.
 - A. Communication support including participation in specification planning with assigned City staff, attendance at City Council meetings relevant to project and meeting with assigned City staff to report/discuss progress and problems on an established schedule.
 - B. During the construction phases, consultants will be expected to visit the site to monitor progress, quality and adherence to specifications and drawings. Consultant is expected to recognize and immediately notify City of out of specification or otherwise unacceptable construction.
 - C. Provide as built documents, consisting of reproducible copies of original drawings with modifications including electronic files in standard CAD format.

B. Solicitation Schedule.

There will be a NON-MANDATORY PRE-SUBMITTAL TOUR on **Thursday, November 17, 2016 at 3:00 PM**. Closing for this RFP will take place on **Thursday, December 1, 2016 at 3:00 PM**. The RFP process, including the evaluations, is estimated to take two weeks, resulting in the City selection of a Consultant on or about December 15, 2016. Consultant should be ready to begin work no later than January 3, 2017. The City reserves the right to modify this schedule.

C. Proposed Schedule of Work.

After selection of a Consultant, currently available data and conceptual plans and technical memos will be available to begin the design process.

The successful Consultant will attend a minimum of four (4) meetings with the City to review features of the 30% iteration document, the 60% iteration document and associated plans. After City review, the 30% iteration document and associated plans will be revised. The Consultant shall then coordinate and submit approved 60% iteration documents and plans to funding agency that the City shall deem appropriate. A 30 day window is assumed for review by City and funding agencies.

The **60% iteration** document and associated plans shall be available for review by

the City no later than **February 28, 2017.**

The **final design** level document and associated plans shall be available for review by the City no later than **April 20, 2017.**

The successful Consultant will attend a minimum of four (4) meetings with the City to review features of the final design level document and associated plans. After City review, the final design level document and O&Ms and associated plans will be revised. The Consultant shall then coordinate and submit the approved final design documents and associated plans to Oregon DEQ, and funding agency that the City deems appropriate.

The design project shall be considered complete and final upon meeting the following conditions:

1. Funding agency has given Approval for Construction;
and
2. City has given Approval for Construction.

The City anticipates putting the construction project out to bid during the spring of 2017 construction season.

D. Budget.

The budget for this design project will not exceed \$150,000. The City reserves the right to select the Consultant or a different consultant for future work as deemed appropriate by the City. **Work under this contract will be funded in its entirety with federal grant funds from the Oregon Community Development Block Grant program.**

E. Project Owner.

The City of Vernonia: Contact: Josette M. Mitchell, City Administrator at City Hall at 1001 Bridge Street, Vernonia, Oregon or via email jmitchell@vernonia-or.gov

F. Project Management Team.

The team will consist of the City of Vernonia, Community Action Team, Mary McArthur, ColPac, and representatives from the Vernonia Senior Citizens and Vernonia Cares Food Bank board of Directors.

G. Certificates and Registration for Professional Services.

The respondents must provide current registration for the particular discipline(s) utilized in the project.

H. No License or Certifications conferred.

By requesting this information and making the documents available, no license of any kind is

conferred to potential consultants, nor is permission granted to use the documents supplied for any other purpose.

I. Certificate of Non-Discrimination.

A certificate of non-discrimination in a form acceptable to the City must be provided by the respondents to the RFP, that as part of their Proposal, they have not discriminated against minority, women, or emerging small business enterprises. Before final payment to the successful Consultant is made, the Consultant will be required to submit a “Minority, Women, and Emerging Small Business Activity Report” form in the form specified in the contract between the City and successful respondent.

J. Conflict of Interest.

No employee, agent, consultant, officer, elected official or appointed official of the city of Vernonia grant recipient or any of its sub-recipients (sub-grantees) receiving CDBG funds who exercise or have exercised any functions or responsibilities with respect to CDBG activities who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity or have an interest or benefit from the activity or have an interest in any contract, subcontract, or agreement with respect thereto, or proceeds there under, wither for themselves or those with whom we have family or business ties, during their tenure or for one year thereafter, in accordance with 24 CFR Part 570.489(h).

K. Certification Regarding Lobbying.

The successful Consultant awarded the contract will be required to sign a certification regarding lobbying and the prohibition on the use of federal funds for lobbying at the time of execution of the contract in the form specified by the Community Development Block Grant program.

L. EPLS Check for Professional Services.

All persons hired to complete activities funded in whole or in part with federal funds must be eligible to perform work under a federally funded project. To be eligible a professional must not be listed on the “List of Parties Excluded from Federal procurement and Non-procurement Programs” published by the General Services Administration. This list is commonly referred to as the “Excluded Parties List” or EPLS.

M. Compliance with Section 3.

Economic Opportunities for Low- and Very Low-Income Persons (This clause is applicable only if the Community Development Block Grant exceeds \$100,000 the funded activity leads to construction i.e. engineering, program management etc.)

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD

assistance for housing.

- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations in 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

2.0 CONTENT OF SUBMITTED PROPOSALS

The City of Vernonia is not interested in color photos, boilerplate information or company brochures and therefore is imposing a page limit on submitted Proposals. All firms responding to this RFP are directed to provide relevant information that will be useful to the selection committee within the page limits specified. Proposals shall include:

A. Front Cover

This front cover must state clearly that the submittal is a Response to Request for Proposal for the "ROSE AVENUE SENIOR CENTER & FOOD BANK for Vernonia, Oregon." Cover must include Consultant's firm name, address.

B. Letter of transmittal

A letter of transmittal must accompany 8 hard copies and one electronic copy of the Qualifications on CD. The letter of transmittal must be addressed to City of Vernonia, **Attn: Josette M. Mitchell, City Administrator, 1001 Bridge Street, Vernonia, OR 97064**

- C. Firm Qualifications – Experience – Regulatory interaction
- D. Contact information for minimum of 2 past clients regarding firm’s experience “on similar projects” Senior Centers, Food Banks, and Social Service buildings.
- E. Professionals assigned to project – roles – current registration
- F. Resumes of key personnel, contact information
- G. Standard employee rate schedule
- H. Insurance coverage information

Page Limits by Category	
Category	Maximum Pages
Front Cover	1
Letter of Transmittal	1
Firm qualifications, experience, regulatory interaction	2
Contact Information of past clients, “on similar projects” minimum of 2 clients	1
Staff Professionals assigned to project and specific roles	10
Resumes – current registrations	1 page per individual
Standard employee rate schedule	1
Insurance information	1

3.0 TIME – PLACE – TO SUBMIT STATEMENT OF QUALIFICATIONS

The closing for receipt of the Consultant’s Proposal by the City is **Thursday, December 1st, 2016, at 3:00 PM.** Proposals will be accepted only at the address indicated above (1001 Bridge Street) and will be stamped with a date and time upon receipt. Proposals submitted after the closing will be

considered late and will not be accepted by the City for consideration. Proposal opening will occur immediately after closing. Upon opening the Proposals, the Consultant's name will be read aloud. The evaluation results will be made available upon request at a later date to the proposers. Any Consultant may withdraw its Proposal prior to the final deadline for submission by providing the City with a written request stating the desire to withdraw. Should a Consultant's Proposal be withdrawn it will not prejudice the right of the firm to file a new Proposal before the closing shown above.

4.0 REQUESTS FOR INFORMATION OR CLARIFICATION

All requests for information or clarification must be in writing and either addressed or faxed to to City of Vernonia, 1001 Bridge Street, Vernonia, OR 97064, FAX 503-429-4232 and to be given consideration must be received at least four days prior to the date fixed for the opening of the RFQ. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, will be delivered via mail or facsimile transmission to all prospective bidders not later than 72 hours prior to the RFQ opening, at the respective addresses furnished for such purposes.

5.0 INCURRING COSTS

Proposers responding to this RFP do so solely at their own expense. The City will not be responsible under any circumstances for the costs incurred by the potential Consultants or others for the preparation and submission of their Proposals.

6.0 PUBLIC RECORDS

Any information submitted through this RFP process will become public record. The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted.

7.0 INVESTIGATIONS

The City of Vernonia may make independent investigations as deemed necessary to determine the responsiveness, **responsibility**, and/or the ability of any Consultant to perform the work. The proposer shall furnish to the City of Vernonia, or their representatives, all such information for this purpose.

8.0 PROTESTS

Protests are subject to and must comply with the City's Public Contracting Rules and/or the protest procedures set forth in Oregon Administrative Code, Chapter 137, division 48.

9.0 EVALUATION OF PROPOSALS & CONSULTANT SELECTION

This RFP is issued by the City of Vernonia, who has publicly advertised the RFP and made it available to design professionals, firms, and other interested parties. A form of the City's contract is included with this RFP. Consultant's submittal of their firm's qualifications constitutes the Consultant's acceptance of all of the terms and conditions of the contract. The City reserves the right to reject any or all Proposals. If negotiations are commenced by the City but fail to reach agreement with the selected Consultant, the City reserves the right to select the next qualified Consultant, or reject all Proposals in the City's sole determination of its best interests.

A. Evaluation/negotiation committee

The City will establish an Evaluation comprised of City personnel, Tenant representatives, and the City’s Engineer of Record. The committee will evaluate the Proposals through numeric scoring system as outlined below.

B. Evaluation criteria and scoring

Criteria	Scoring (pts. per City assignment)
Consultant’s qualifications, resources, performance examples, regulatory interaction	30 points
Has Consultant provided a list of a minimum of two (2) clients capable of discussing completed Consultants work on similar projects?	30 points
Assigned Project personnel – project roles	10 points
Resumes of Key Personnel – current registrations	10 points
Information regarding insurance coverage	5 points
General appearance and completeness of Proposal	5points
History of working with the City of Vernonia	10 points
TOTAL OF POINTS	100 POINTS

The City reserves the right to reject any or all Proposals not in compliance with all of the outlined solicitation procedures and/or waive any conflict in the solicitation documents. During the evaluation, the City has the right to require any clarification or change it needs in order to understand a Proposal. The City may not negotiate with the Consultants regarding the contract price and the final scope of work prior to selection.

1. Disqualification of Evaluation Committee

Each Evaluation Committee member will be required to be present (by telephone or otherwise) for all meetings and any interviews. In the event that an Evaluation Committee member cannot fully participate, then that Committee member’s scoring will not be counted.

2. Contract Award and Finalization

The City will provide a Notice of Intent to Award upon completing the evaluation process. The City will then negotiate with the highest scoring Consultant first and should it not reach a favorable agreement, the City will terminate negotiations and determine whether to award the contract and commence negotiations with the next highest scoring Consultant. At the successful conclusion of negotiations, the successful Consultant shall enter into the professional services

contract attached, subject to the negotiated price and final scope of services.

3. Notice to Proceed

The Notice to Proceed shall be issued within 10 days of the execution of the contract by the successful Consultant. Should there be reasons why the Notice to Proceed cannot be issued within this period; the time may be extended by a reasonable time as determined by the City. If the Notice to Proceed has not been issued within the reasonable extension of time determined by the City but not greater than 30 days, the successful Consultant may withdraw their Proposal without further liability on the part of either party.

4. Evaluation Process

The Consultant should be aware that discretion is exercised by the Evaluation Committee in resolving unforeseen circumstances that arise during this process. By submitting a Proposal, the Consultant agrees to the Committee's exercise of discretion to ensure successful project completion for the City.

5. Limitations

The City reserves the right to waive any irregularities in submitted Proposals, to reject any and all Proposals and to terminate the selection process at any time if, at its sole discretion, it determines such action would be in the best interests of the City.

END OF RFP

4. Contract Documents. This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibit A (Scope of Work), Exhibit B (Required Insurance), and Exhibit C (Certification Regarding Lobbying). Exhibits A-C are attached to this Contract and incorporated by this reference.

5. Independent Contractor; Responsibility for Taxes and Withholding

a. Contractor shall perform all Work as an independent contractor. The City reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, the City may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

b. Contractor understands and agrees that it is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.

c. Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

6. Subcontracts, Successors, and Assignments

a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract without City's prior written consent. In addition to any other provisions City may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that City will receive the benefit of subcontractor performance as if the subcontractor were the Contractor under this Contract. City's consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Contract.

b. This Contract is binding upon and inures to the benefit of the parties, their respective successors, and permitted assigns, if any.

c. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without City's prior written consent.

7. No Third Party Beneficiaries. City and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or may be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of the terms of this Contract.

9. Representations and Warranties.

a. Contractor's Representations and Warranties. Contractor represents and warrants to City that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession, (4) Contractor will, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work, and (5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. Warranties cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any

other warranties provided.

10. Confidential Information.

a. Contractor acknowledges that it or its employees, subcontractors or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is the confidential information of City or City's clients. Any and all information provided by City and marked confidential, or identified as confidential in a separate writing, that becomes available to Contractor or its employees, subcontractors or agents in the performance of this Contract shall be deemed to be confidential information of City ("Confidential Information"). Any reports or other documents or items, including software, that result from Contractor's use of the Confidential Information and any Work Product (as defined below) 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 Contractor) publicly known; (b) is furnished by City to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (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 Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor 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 Contract, and to advise each of its employees, subcontractors and agents of their obligations to keep Confidential Information confidential. Contractor 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, Contractor shall advise City immediately in the event Contractor 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 Contract and Contractor will at its expense cooperate with City in seeking injunctive or other equitable relief in the name of City or Contractor against any such person. Contractor agrees that, except as directed by City, Contractor will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at City's request, Contractor will turn over to City all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

c. Injunctive Relief. Contractor acknowledges that breach of this Section 10, 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 10, in addition to any other legal remedies that may be available. Contractor 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.

d. Security. Contractor 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.

11. Ownership of Work Product.

a. Definitions. As used in this Section 11, and elsewhere in this Contract, the following terms have the meanings set forth below:

(i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and

developed independently from the Work.

(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than City or Contractor.

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to City pursuant to the Work.

b. Original Works. All Work Product created by Contractor pursuant to the Work, 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 Contractor agree that original works of authorship are "work made for hire" of which City is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Contractor hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City's reasonable request, Contractor shall execute further documents and instruments necessary to fully vest such rights in City. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, 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.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to City an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the City's behalf and in the name of the City an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf.

c. Contractor Intellectual Property. In the event that Work Product is Contractor Intellectual Property Contractor hereby grants to City an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on City's behalf.

d. Third Party Works. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the City's behalf and in the name of the City, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on City's behalf.

e. Limited City Indemnity. To the extent permitted by the Oregon Constitution and the Tort Claims Act, Contractor 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.

f. Contractor Use of Work Product. Contractor may refer to the Work Product in its brochures or other literature that Contractor utilizes for advertising or promotional purposes and, unless otherwise specified by City, may use the Work Product on other unrelated projects.

12. Indemnity.

a. GENERAL INDEMNITY. CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE CITY AND ITS OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST FOR ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (TOGETHER “LIABILITIES”) RESULTING FROM OR ARISING OUT OF THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS SUBCONTRACTORS, AGENTS OR EMPLOYEES UNDER THIS CONTRACT, EXCEPT THAT CONTRACTOR IS NOT OBLIGATED TO INDEMNIFY THE CITY TO THE EXTENT THE LIABILITIES RESULT FROM OR ARISE OUT OF THE CITY’S NEGLIGENT ACTS OR OMISSIONS.

b. PROFESSIONAL INDEMNITY. CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE CITY AND ITS OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES ARISING OUT OF THE PROFESSIONALLY NEGLIGENT ACTS, ERRORS OR OMISSIONS OF CONTRACTOR OR ITS SUBCONTRACTORS, AGENTS OR EMPLOYEES IN THE PERFORMANCE OF THIS CONTRACT.

c. CONTROL OF DEFENSE AND SETTLEMENT. CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 11.a OR 11.b; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND THE CLAIM IN THE NAME OF THE CITY, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE CITY OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE CITY ATTORNEY, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE CITY ATTORNEY, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE CITY, NOR SHALL CONTRACTOR SETTLE ANY CLAIM ON BEHALF OF THE CITY WITHOUT THE APPROVAL OF THE CITY ATTORNEY. THE CITY MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE CITY DETERMINES THAT CONTRACTOR IS PROHIBITED FROM DEFENDING THE CITY, OR IS NOT ADEQUATELY DEFENDING THE CITY’S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE CITY DESIRES TO ASSUME ITS OWN DEFENSE.

13. Insurance. Contractor shall maintain in effect for the duration of this Contract the insurance as set forth in attached Exhibit B.

14. Default; Remedies; Termination.

a. Default by Contractor. Contractor is in default under this Contract if:

(i) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

(ii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after City’s notice or such longer period as City may specify in the notice; or

(iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and the breach, default or failure is not cured within fourteen (14) calendar days after City's notice, or any longer period as City may specify in the notice.

b. City’s Remedies for Contractor’s Default. In the event Contractor is in default under Section 14.a, City may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

(i) termination of this Contract under Section 14.e(ii);

(ii) withholding all monies due for Work and Work Products that Contractor has failed to deliver

within any scheduled completion dates or has performed inadequately or defectively;

(iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;

(iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections 14.a, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 14.e(i).

c. Default by City. City is in default under this Contract if:

(i) City fails to pay Contractor any amount pursuant to the terms of this Contract, and City fails to cure the failure within thirty (30) calendar days after Contractor's notice or any longer period as Contractor may specify in the notice; or

(ii) City commits any material breach or default of any covenant, warranty, or obligation under this Contract, and the breach or default is not cured within thirty (30) calendar days after Contractor's notice or any longer period as Contractor may specify in the notice.

d. Contractor's Remedies for City's Default. In the event City terminates the Contract under Section 14.e(i), or in the event City is in default under Section 14.c and whether or not Contractor elects to exercise its right to terminate the Contract under Section 14.e(iii), Contractor's sole monetary remedy is (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred and interest within legal limits, and (b) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim(s) that City has against Contractor. In no event is City liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 14.d, Contractor shall pay immediately any excess to City upon written demand provided in accordance with Section 20.

e. Termination.

(i) **City's Right to Terminate at its Discretion.** At its sole discretion, City may terminate this Contract:

(A) For its convenience upon thirty (30) days' prior written notice by City to Contractor;

(B) Immediately upon written notice if City fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or

(C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the City's purchase of the Work or Work Products under this Contract is prohibited or City is prohibited from paying for such Work or Work Products from the planned funding source.

(ii) **City's Right to Terminate for Cause.** In addition to any other rights and remedies City may have under this Contract, City may terminate this Contract immediately upon written notice by City to Contractor, or at such later date as City may establish in the notice, or upon expiration of the time period and with the notice as provided in Section 14.e(ii)(B) and 14.e(ii)(C) below, upon the occurrence of any of the following events:

(A) Contractor is in default under Section 14.a(i) because Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;

(B) Contractor is in default under Section 14.a(ii) because Contractor no longer holds a license or certificate that is required for it to perform services under the Contract and Contractor has not obtained the license or certificate within fourteen (14) calendar days after City's notice or any longer period as City may specify in such notice; or

(C) Contractor is in default under Section 14.a(iii) because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and the breach, default or failure is not cured within fourteen (14) calendar days after City's notice, or any longer period as City may specify in such notice.

(iii) Contractor's Right to Terminate for Cause. Contractor may terminate this Contract with written notice to City as provided in Sections 14.e(iii)(A) and 14.e(iii)(B) below, or at such later date as Contractor may establish in the notice, upon the occurrence of the following events:

(A) City is in default under Section 14.c(i) because City fails to pay Contractor any amount pursuant to the terms of this Contract, and City fails to cure such failure within thirty (30) calendar days after Contractor's notice or any longer period as Contractor may specify in the notice; or

(B) City is in default under Section 14.c(ii) because City commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and City fails to cure the failure within thirty (30) calendar days after Contractor's notice or any longer period as Contractor may specify in the notice.

(iv) Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to City all of City's property (including without limitation any Work or Work Products for which City has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such City property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless City expressly directs otherwise in the notice of termination. Upon City's request, Contractor shall surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

15. Records Maintenance; Access. Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in a manner that clearly documents Contractor's performance. Contractor acknowledges and agrees that City and its duly authorized representatives shall have access to the financial records and other books, documents, papers, plans, records of shipments and payments and writings of Contractor that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all the financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or any longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

16. Compliance with Applicable Law. Contractor shall employ the same professional skill, care, and diligence as other professionals providing similar services under similar conditions to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg)).

17. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon

prior to entering into this Contract.

18. Force Majeure. Neither City nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of City or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

19. Time is of the Essence. Contractor agrees that time is of the essence under this Contract.

20. Notice. Except as otherwise expressly provided in this Contract, any communications between the parties or notices to be given under this Contract shall be given in writing, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or City at the address, number or email address set forth in this Contract, or to any other addresses or numbers as either party may indicate pursuant to this Section 20. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against City, any notice transmitted by facsimile must be confirmed by telephone notice to City's Director of Personnel and Finance. Any communication or notice given by personal delivery shall be effective when actually delivered.

21. Severability. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

22. Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

23. Governing Law; Venue; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between City and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Columbia County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

24. Merger Clause; Waiver. This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of City to enforce any provision of this Contract shall not constitute a waiver by City of that or any other provision.

25. Amendments. No amendment to this Contract is effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained before becoming effective.

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR

By: _____
Title: _____

Facsimile number: _____
Federal Tax Number: _____
Oregon/State Tax Number: _____

CITY

Josette M. Mitchell
City Administrator

EXHIBIT A SCOPE OF WORK

To provide full architectural services including design, develop bid documents and provide construction management, **for the Rose Avenue Senior Center/Food Bank Project Building.** The City will hire a grant administrator to assist the City with administration, monitoring, reporting, and record keeping requirements associated with the CDBG program and grants. The City will hire a construction contractor to build the project.

The **60% iteration** level document and associated plans shall be available for review by the City no later than **February 28, 2017.**

The Consultant will attend a minimum of four (4) meetings with the City to review features of the 30% iteration document and associated plans. After City review, the 30% iteration document and associated plans will be revised. The Consultant shall then coordinate and submit approved 60% iteration level documents and plans to funding agency that the City shall deem appropriate. A 30 day window is assumed for review by City, and funding agencies.

The **final design** level document and associated plans shall be available for review by the City no later than **April 20, 2017.**

The Consultant will attend a minimum of four (4) meetings with the City to review features of the final design level document and associated plans. After City review, the final design level document and O&Ms and associated plans will be revised. The Consultant shall then coordinate and submit the approved final design documents and associated plans to Oregon DEQ, and funding agency that the City deem appropriate.

The design project shall be considered complete and final upon meeting the following conditions:

1. Oregon DEQ has given Approval for Construction,
2. Funding agencies have given Approval for Construction,
3. City has given Approval for Construction,

The City anticipates putting the construction project out to bid during the spring of 2017 construction season.

EXHIBIT B
INSURANCE REQUIREMENTS

Contractor shall, at its own expense, at all times during the term of this contract, maintain in force:

1. A comprehensive general liability policy including coverage for contractual liability for obligations assumed under this contract, blanket contractual liability, products and completed operations and City's and contractor's protective insurance;
2. A professional errors and omissions liability policy; and
3. A comprehensive automobile liability policy including owned and non-owned automobiles.

The coverage under each liability insurance policy shall be equal to or greater than the limits for claims made under the Oregon Tort Claims Act with minimum coverage of \$2,000,000 per occurrence (combined single limit for bodily injury and property damage claims). Provided, however, that coverage for professional errors and omissions liability may be for a minimum coverage of \$100,000. The coverage limits are subject to change in accordance with any changes in limits under the Oregon Tort Claims Act, or to the extent the City deems necessary to cover the City's liability in the absence of the Oregon Tort Claims Act.

Liability coverage shall be provided on an "occurrence" basis. "Claims made" coverage will not be acceptable, except for the coverage required by (2) above. The City shall be named as an additional insured (except for coverage required by 2 above).

Certificates of insurance acceptable to the City shall be filed with City prior to the commencement of any work by Contractor. Each certificate shall state that coverage afforded under the policy cannot be cancelled or reduced in coverage until at least 30 days prior written notice has been given to City. A certificate which states merely that the issuing company "will endeavor to mail" written notice is unacceptable.

EXHIBIT C
CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- C. The undersigned shall require that language of this certification be included in the award documents for all sub awards and all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by section 1352, title 31, U.S.Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed (Contractor)

Title/Firm

Date