

City of Oakridge
REAL ESTATE BROKER / AGENT OF RECORD
REQUEST FOR PROPOSAL

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CITY OF OAKRIDGE, OREGON
REAL ESTATE BROKER / AGENT OF RECORD
REQUEST FOR PROPSAL

GENERAL INSTRUCTIONS TO PROPOSERS

The City of Oakridge invites you to submit a typed and signed proposal for Real Estate Broker / Agent of Record for a two year period beginning May 1, 2020 to April 30, 2022. Proposals must address all items in this request for proposal.

SUBMISSION REQUIREMENTS

- A. Two copies of sealed proposals are required; not to be opened until after the final submission date and hour listed below. Submissions shall become property of the City of Oakridge without obligation.

The city will not pay for any costs incurred by proposers in the preparation, submission, and presentation of their proposals.

- B. Sealed proposals must be received by Wednesday, April 1, 2020 at 4:00 p.m. Proposals must be submitted in an envelope containing the name and address of the proposer and clearly marked "Real Estate Broker / Agent of Record Proposal" to:

Bryan Cutchen, City Administrator
City of Oakridge
P.O. Box 1410
Oakridge, OR 97463

- C. Delivery is the sole responsibility of the proposers. Proposals received after the date and time indicated above will be returned unopened.
- D. Proposals will be opened at the scheduled time at the City of Oakridge City Hall, 48318 E. 1st Street, Oakridge, Oregon. Proposers wishing to be present at the time of opening will be informed of the number and name of proposers.
- E. In order to be considered for award, the proposer must complete all forms.
- F. Any questions regarding the RFP must be submitted in writing to the attention of the City Administrator, Bryan Cutchen. Written responses will be available to all interested parties. Oral interpretations or statements cannot modify the provisions of the RFP. If inquiries or comments by proposers raise issues that require clarification by the City, or the City decides to revise any part of the RFP, addenda will be provided to all

persons who requested the RFP. Receipt of an addendum must be acknowledged by signing and returning it with the proposal.

- G. It is herein understood that the Brokerage will be employed by the City of Oakridge for the services of a particular agent to provide the specific services addressed in this RFP. The term “Broker / Agent” will be used to identify this arrangement.
- H. The City of Oakridge may reject any proposal not in compliance with all prescribed procedures and requirements, and may reject for good cause any or all proposals upon a finding of City of Oakridge that it is in the public’s interest to do so. Minor irregularities may be waived by the City of Oakridge.

CITY OF OAKRIDGE
REAL ESTATE BROKER / AGENT OF RECORD

REQUEST FOR PROPOSAL

1.0 GENERAL INFORMATION

City of Oakridge, Oregon is seeking the services of a Broker / Agent to assist in the City's marketing and sale / purchase of real property.

2.0 PROPERTY

Properties are currently located in Oakridge, Oregon.

3.0 AGENCY

The Broker / Agent shall address compliance with ORS 696.800–696.995. To conform to State Broker / Agent policies, the Broker / Agent shall disclose the types of agency relationships recognized by their brokerage policy and how the City can expect implementation.

4.0 SCOPE OF PROPOSAL

The selected Broker / Agent will provide support to the City in the areas of real estate.

4.1 Supervision. The Broker / Agent shall work under the supervision of the City, the City being land owner and client, and shall work closely with the City Administrator, Finance Director, Planning Department, Public Works Department, City Recorder, and the City's legal counsel. The Broker / Agent is an independent contractor and shall be responsible for providing support to the City in all areas of real estate transactions.

4.2 Authority Exercised. The Broker / Agent shall communicate and negotiate with Purchasers and agents of Purchasers in these real estate transactions on behalf of the City, including providing City information pertinent to property held by the City. The Broker / Agent shall also negotiate on behalf of the City to purchase property.

4.3 Typical Duties. The Broker / Agent will be required to assist with the sales of real property by:

- A. Provide the City with a market analysis and an analysis of the City's comprehensive plan and zoning designations for City's properties. The analysis should include a recommendation as to whether the property should continue to be held for investment purposes or whether it would be more beneficial to sell the property.

- B. The City will establish a budget for advertising and marketing of the properties if it is determined that they should be sold. When the budget is established, the Broker/Agent shall lay out a six month plan on how that money would be spent to market such properties.
- C. Analyzing and evaluating all offers for sale or purchase and preparing recommendations to the City.
- D. Presenting all offers to City staff and City Council, along with analysis and recommendations.
- E. Preparing and presenting any counter-offers or addenda requested by the City.
- F. Completing the Earnest Money Offer by securing all appropriate signatures and approvals.
- G. Obtain City Attorney review and approval of all counter-offers, addenda, Earnest Money agreements and other transaction documents required to be signed by the City or by which the City may be bound.
- H. Maintaining escrow files on all transactions.
- I. Providing follow-up on each file and monthly reports to the City Administrator and appropriate City staff.
- J. Consulting for any land divisions, surveys, inspections, cleanup, etc., as may be necessary in connection with specific transactions.
- K. Providing information and documents necessary for Escrow, in conjunction with legal counsel, in preparations for closing.
- L. Providing the communications link between the City and Purchaser / Purchaser's agent or property owner.

The Broker / Agent shall:

- M. Present all offers and counter offers in a timely manner.
- N. Make timely confirmation of all real estate transactions.
- O. Provide another Broker / Agent or staff person who is continually updated on the status of the City's real estate transactions.

5.0 TERM OF AGREEMENT

- 5.1 The contract will be for a two-year period with a possible two-year extension. The contract will be effective upon signing by Broker / Agent and City.
- 5.2 The contract may be terminated by City or Broker / Agent upon sixty (60) days written notice to the other party or upon failure of either party to perform services or the duties specified herein. Upon early termination, City may be required to compensate Broker / Agent for any transactions in negotiation or in contract for an exclusionary period of one hundred twenty (120) days.

6.0 MINIMUM REQUIREMENTS

Proposers must meet the following minimum requirements to be considered as a qualified proposer:

- A. Be licensed in Oregon.
- B. Have a minimum experience of at least five (5) years in commercial and/or industrial real estate transactions.
- C. Have experience with private and public sector real estate transactions.

Additionally, it is preferred, but not required, that the Broker / Agent has an office within or near the Oakridge Urban Growth Boundary.

7.0 FEES

Broker / Agent will present a proposal of compensation to the City.

- A. Please provide hourly rate, if applicable.
- B. Please provide separate commission schedule for property transactions that include the City as the buyer / seller in a single transaction.
- C. Please provide commission schedule / fee proposal.

8.0 PROPOSAL DEADLINES

- 8.1 Sealed proposals will be accepted until 4:00 p.m., Wednesday April 1, 2020 at Oakridge City Hall, 48318 1st St. Oakridge, OR 97463.
- 8.2 All proposals are to be clearly labeled on the outside of the envelope "Real Estate Broker / Agent of Record Proposal."

- 8.3 Two copies of each proposal are required.
- 8.4 Delivery is the sole responsibility of the proposers. Proposals received after the date and time indicated above will be returned unopened.
- 8.5 Whether your proposal is mailed in, or hand delivered, it must be addressed to:

Bryan Cutchen, City Administrator
City of Oakridge
PO Box 1410
Oakridge, Oregon 97463

9.0 PROPOSAL REQUIREMENTS

Please include the following in your proposal:

- A. Name, address, phone number, and email address of your firm and Broker / Agent
- B. A statement of your understanding of the work required and the manner in which you plan to approach it. Completion of Attachment A.
- C. Completion of Authorized Signatures and Attestation form attached hereto as Attachment B.
- D. Certificate of Insurance as required on the Personal Services Contract attached hereto as Attachment C.
- E. Full disclosure of commissions (See Section 7.0 FEES) is required on all transactions and the commissions will be the fee paid under this agreement
- F. Photocopy of Oregon Real Estate License
- G. Résumés setting forth qualifications and personal history of the individual Agent or Brokerage
- H. References

10.0 EVALUATION AND SELECTION PROCESS

- 10.1 All proposals will be reviewed by a committee made up of the City Administrator, Public Works Director, one member of the City Council, one member of the Planning Commission and one member of the Economic Development Committee.

- 10.2 If requested by the City, two or more individuals may be selected for oral interviews.
- 10.3 Broker / Agent may be asked to demonstrate their knowledge of the City of Oakridge's Comprehensive Plan and Zoning Ordinance.
- 10.4 A single Broker / Agent will be identified and a recommendation will be presented to the City Council at the April 16, 2020 Council meeting. After the Council's action, the Broker / Agent and the City will enter into a Personal Services Contract substantially in the form of the one attached to this Request for Proposal and labeled Attachment C.

CITY OF OAKRIDGE, OREGON
REAL ESTATE BROKER / AGENT OF RECORD
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QUESTIONNAIRE
ATTACHMENT A

1. How many years has your firm been in business?
2. How many years has your brokerage been licensed to sell real estate in the State of Oregon? Types of licenses? Restrictions?
3. What was your brokerage's approximate annual volume?
4. From what location would the City of Oakridge's account be serviced? Will service be split between one or more locations?
5. How often a year will the Broker / Agent call on the City of Oakridge to update the City on activity on various properties and review marketing strategy?
6. As specified in Section 4.3 (B) under Scope of Proposal, the City will establish a budget for advertising and marketing of properties. Please prepare a six month plan on how that money would be spent to market the properties.

CITY OF OAKRIDGE, OREGON
REAL ESTATE BROKER / AGENT OF RECORD
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AUTHORIZED SIGNATURES AND ATTESTATION
ATTACHMENT B

I, the undersigned, and authorized representative of

_____ ,

whose address is:

_____ ,

have read and thoroughly understand the specifications, instructions, and all other conditions of the Request for Proposal issued by the City of Oakridge for Real Estate Broker / Agent of Record Services from May 1, 2020 to April 30, 2022.

Acting on the behalf of my Real Estate firm, which is listed above, I do attest that the services offered by us meet the City of Oakridge's specifications in every respect, (check one) ____ without exceptions ____ with exceptions.

We, therefore, offer and make this bid to furnish the City of Oakridge Real Estate Broker / Agent of Record Services detailed in our proposal at the price indicated.

Firm Name: _____

Firm Address: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

CITY OF OAKRIDGE, OREGON
REAL ESTATE BROKER / AGENT OF RECORD
REQUEST FOR PROPSAL

PERSONAL SERVICES CONTRACT
ATTACHMENT C
(begins next page)

**CITY OF OAKRIDGE
PERSONAL SERVICES CONTRACT**
([insert name of project])

DATE: _____

PARTIES: City of Oakridge (“City”)
P.O. Box 27
Oakridge, OR 97031

_____ (“Contractor”)

RECITALS

Contractor is being engaged to [describe project]. Contractor has been chosen by City to enter into this Contract following the issuance of a Request for Proposals (RFP).

NOW, THEREFORE, BASED ON THE MUTUAL PROMISES OF THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

1. Contract Period. This Contract shall become effective on the date this Contract has been fully executed by each party. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when the City accepts Contractor's completed performance or on _____, whichever date occurs last. Contract termination does not extinguish or prejudice City's right to enforce this Contract with respect to any default by Contractor that has not been cured.

2. Statement of Work. Contractor shall perform the work (the “Work”) as set forth in the RFP and Contractor's Proposal, attached as Exhibits B and C. Contractor shall perform the Work in accordance with the terms and conditions of this Contract. To the extent that the terms and conditions of this Contract and any attachments conflict, the terms and conditions of this Contract shall control.

3. Consideration

a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is _____. City will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

- b. Interim payments to Contractor will be made in accordance with the payment schedule and requirements in Exhibits B and C.
- c. City will pay only for completed Work that is accepted by City.
- d. Contractor shall submit monthly invoices to the City for Work performed. The invoices shall describe all Work performed with particularity and by whom it was performed and shall itemize and explain all expenses that this Contract requires City to pay and for which Contractor claims reimbursement. Each invoice also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor will specifically note in the appropriate invoice when it has requested payment for one-third and two-thirds of the maximum, not-to-exceed compensation. Contractor shall send invoices to the City's Director of Personnel and Finance.

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 (Required Insurance), Exhibit B (the RFP, or other procurement document, if any) and Exhibit C (the Proposal, or other binding Contractor solicitation submission, if any). 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. Ownership of Work Product.

a. Definitions. As used in this Section 10, 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.

11. Indemnity.

a. GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE CITY AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

b. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 11.a, CONTRACTOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD CITY AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO CITY BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE CITY'S USE

THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

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.

12. Insurance. Contractor shall maintain insurance as set forth in attached Exhibit A.

13. 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 13.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 13.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 13.a, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 13.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 13.e(i), or in the event City is in default under Section 13.c and whether or not Contractor elects to exercise its right to terminate the Contract under Section 13.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 13.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 13.e(ii)(B) and 13.e(ii)(C) below, upon the occurrence of any of the following events:

(A) Contractor is in default under Section 13.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 13.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 13.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 13.e(iii)(A) and 13.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 13.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 13.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.

14. 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 six (6) 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.

15. Compliance with Applicable Law. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. 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: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. 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)).

16. 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.

17. 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.

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

19. 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 19. 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.

20. 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.

21. 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.

22. 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 Oakridge 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.

23. 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.

24. 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

Kathy Holston
Mayor of Oakridge

EXHIBIT A
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 owner'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 \$500,000 per occurrence (combined single limit for bodily injury and property damage claims) or \$500,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage. 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.

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.