

# **APPENDIX A**

## **CITY OF COTTAGE GROVE ARCHITECTURAL SERVICE CONTRACT**

This Contract is by and between the City of Cottage Grove (City) and \_\_\_\_\_ (Architect) for the performance of architectural services to provide Architectural Services, including Design Development and Contract Documents, Bidding and Contract Administration for the rehabilitation of the Cottage Grove Armory, based upon the approved Schematic Design Plan and Final Report. Services may include project phasing recommendations, integration with a separate historic preservation grant(s), and coordination of cost estimation services (Phase 1), and enhanced construction observation (Phase 2).

### **RECITALS**

City solicited proposals from Architect and architectural firms to provide architectural services for Project through a formal competitive proposal process, conducted under Oregon Administrative Rules (OAR) 137-048-0220.

Architect submitted its proposal, having examined the Request for Proposals, and was chosen as the most highly qualified Architect, best suited to meet the City's needs pursuant to the RFP criteria.

City has awarded the Contract to Architect.

### **CONTRACT EXHIBITS**

The following exhibits are incorporated into this Contract by reference:

Exhibit A - Scope of Work  
Exhibit B – Oregon Public Contracting Code Requirements (279C)  
Exhibit C – Request for Proposal  
Exhibit D – Architect's Proposal

In the event of a conflict, the terms of this Contract shall govern, followed by Exhibits A-D, in that order.

### **CONTRACT**

#### **1. Term**

The term of this Contract shall be from its execution to Project completion on or before \_\_\_\_\_, 20\_\_ for Phase I, and as set by addendum for Phase II, if undertaken.

#### **2. Scope of Work**

Architect shall provide all services and deliver all materials as specified in the attached Exhibits A, C and D, which are hereby incorporated into the Contract by this reference, and as may be described by future addendum to this Contract for Phase II. All services and materials shall be provided by Architect in accordance with the Exhibits in a competent and professional manner.

Changes to the Contract shall be made only by a written Change Order. No change in the work or any extra work shall be performed prior to written approval of the Change Order by City. Failure of Architect to secure written authorization for extra work shall constitute a waiver of all rights to an adjustment in the Contract price or Contract time. The price included on any Change

Order shall be inclusive of all estimated costs, both direct and indirect, relating to the change in work. Further, the Change Order shall provide a detailed basis for substantiating any monetary and/or work changes. If monetary changes are made, the Change Order shall contain a maximum not to exceed amount.

Upon City's request and without additional compensation, Architect shall make such revisions to completed Contract Documents as are necessary to correct errors or omissions appearing therein, which deviated from the standard of care described Section 21.

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

For the purposes of this Contract, "Change Order" means a written order signed by the Architect and City authorizing a change in the work and/or an adjustment in the price, deliverable due dates, substantial completion date, or final completion date.

### **3. Compensation**

Architect shall complete its scope of work as defined in Exhibits A, C and D for Phase I for a total fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), including reimbursable expenses. Reimbursable expenses shall be itemized and include expenses incurred by Architect in the interest of the Project for: 1) Long distance communications; 2) Fees paid for securing permits and approval of authorities having jurisdiction over the Project; 3) Reproductions, presentations and work session handouts or other materials; 4) Postage and handling of documents; 5) Expense of overtime work requiring higher than regular rates, if authorized by City; and 6) Renderings and models requested by City. A total maximum fee for Phase II compensation will be set by addendum in accordance with Exhibit D, if and when that work is desired by City, in City's sole discretion.

Payments shall be based upon monthly invoices which Architect shall submit to the City, detailing the previous months' fees, costs and percentage of the Project completed at that time. Upon request, Architect will provide the City representative with documents, records, and draft plans evidencing the progress made on the Project to date. Architect shall send invoices to City's representative at City's address set forth in Section 6. In the event of non-payment due to a fee dispute between the parties, Architect shall continue to provide Contract services to City.

### **4. Contractor Is an Independent Contractor**

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

### **5. Project Managers**

City's Project Manager is \_\_\_\_\_. Architect's Project Manager is \_\_\_\_\_. Architect shall remove any individual or subconsultant from the Project if so

directed by City in writing following discussion with Architect, provided that Architect shall, with City's approval, have a reasonable time period within which to find a suitable replacement.

## **6. Notices**

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

\_\_\_\_\_  
City of Cottage Grove  
400 Main Street  
Cottage Grove, OR 97424  
Phone: (541) 942-5501  
Fax: (541) 942-1267

\_\_\_\_\_, Architect

\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

## **7. Indemnification**

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

Architect shall defend City from claims covered under this section at Architect's sole cost and expense until such time as: (1) an arbitration panel or a court of competent jurisdiction determines that City is liable in whole or in part for the loss or claim caused by City's negligence; or (2) City and Architect mutually agree to allocate the liability.

Architect's indemnification obligations under this Section 7 shall survive the expiration or earlier termination of this Contract.

## **8. Insurance Requirements**

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

- a. Comprehensive General Liability insurance , including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards):

\$2,000,000 – each occurrence (bodily injury)  
\$2,000,000 – general aggregate  
\$1,000,000 – property damage, contractual, etc.

\$2,000,000 – umbrella liability coverage

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

(Proof of coverage will be attached to this contract).

- b. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence. (Proof of coverage will be attached to this contract).
  - c. Errors and Omissions insurance covering Architect's liability arising out of negligent acts, errors or omissions in its performance of work or services under this Contract. Such policy will have a combined single limit of not less than \$2,000,000 per each claim, incident or occurrence for the term of the Project. Such policy will be on a claims made basis and will have an extended claims reporting period of six (6) years after final completion. (Proof of coverage will be attached to this contract).
  - d. The limits required in this Section 8.1 may be met with a combination of underlying and umbrella coverage.
- 8.2 Except as required in 8.1(e) above, if any of the above required insurance is arranged on a "claims made" basis, "tail" coverage will be required at final completion or termination of this Contract for a duration of two (2) years.
- 8.3 Policies shall provide that City, its council members, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 8.1(a) and a waiver of subrogation against them shall be obtained for all coverages. (Proof of coverage will be attached to this contract).
- 8.4 All coverages under Section 8.1 shall be primary over any insurance City may carry on its own.
- 8.5 Architect shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under this Contract.
- 8.6 All policies of insurance shall be issued by good, responsible companies, with a rating reasonably acceptable to City and that are qualified to do business in the State of Oregon.
- 8.7 Architect shall furnish City with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. If requested by City, Architect shall furnish City with executed copies of such policies of insurance. Architect shall furnish City with at least thirty (30) days' written notice of cancellation of, or modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

## **9. Workers' Compensation**

- 9.1 Architect, its subcontractors, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.

9.2 Architect warrants that all persons engaged in Contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Architect shall indemnify City for any liability incurred by City as a result of Architect's breach of the warranty under this Section.

## **10. Hours of Employment**

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

## **11. Assignment**

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

## **12. Labor and Material**

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

## **13. Ownership of Work and Documents**

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

## **14. Termination for Convenience**

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

## **15. Termination for Cause**

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

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

## **16. Termination for Default**

If the City fails to perform in the manner called for in this Contract or if the City fails to comply with any other provisions of the Contract, the Architect may terminate this Contract for default after giving the City the notice and opportunity to cure required by this Section. Prior to termination for default, the Architect must give the City written notice of the breach and the Architect's intent to terminate. If the City has not entirely cured the breach within fifteen (15) days of the date of the notice, then the Architect may terminate the Contract at any time thereafter by giving the City a written notice of termination.

If Architect fails to perform in the manner called for in this Contract or if Architect fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Architect setting forth the manner in which Architect is in default. Architect shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract.

## **17. Remedies**

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

- 17.1 If terminated under Section 16 by City due to a breach by Architect, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Architect shall pay to City the amount of the reasonable excess.
- 17.2 In addition to the above remedies for a breach by Architect, City also shall be entitled to any other equitable and legal remedies that are available.
- 17.3 If City breaches this Contract, Architect's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Architect is entitled.
- 17.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.
- 17.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Architect shall immediately cease all activities related to the services and work under this Contract. As directed by City, Architect shall, upon termination, deliver to City all then existing work product that, if the Contract had been completed, would be required to be delivered to City.

## **18. Nondiscrimination**

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

**19. Governing Law; Jurisdiction; Venue**

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between City and Architect that arises from or relates to this Contract which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Lane County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. ARCHITECT BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of City's protection under the Oregon Tort Claims Act.

**20. Compliance with Laws and Regulations**

Architect shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Architect expressly agrees to comply with: (i) ORS 659A.142; (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) City's performance under this Contract is conditioned upon Architect's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit B and incorporated herein by this reference. Architect, their subconsultants and all employers providing work, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Architect shall adhere to all safety standards and regulations established by City for work performed on its premises or under its auspices.

**21. Experience, Capabilities and Resources**

By execution of this Contract, the Architect agrees that:

Architect is an experienced architect/architectural firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract to design or administer any work within the scope and complexity contemplated by this Contract.

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

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

**22. Drawings, Specifications and Other Documents**

Architect hereby agrees that it will, in a manner consistent with its standard of care defined above in Section 21, prepare all drawings, specifications, and other documents pursuant to this Contract so that they are complete and that the Project, if constructed in accordance with the intent established by such drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility.

**23. Errors and Omissions**

Architect shall be responsible for correcting any errors or omissions in the drawings, specifications, and/or other documents which deviate from the standard of care set forth in Section 21. Architect shall correct at no additional cost to City any and all such errors and omissions in the drawings, specifications, and other documents prepared by Architect or its subconsultants. Architect further agrees to assist City in resolving problems relating to the Project design or specified materials. Architect's warranties and obligations under Sections 21 - 22 of this Contract shall survive the expiration or earlier termination of this Contract.

**24. Contract Performance**

Architect shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. All design documents and work for Phase I shall be completed no later than \_\_\_\_\_, 201\_\_\_\_. Upon authorization by City, all subsequent design documents and work for Phase II shall be completed as set by addendum to this Contract (the "Critical Dates").

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

**25. Access to Records**

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

**26. Representations and Warranties**

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

**27. City Obligations**

- 27.1 City shall provide full information in a timely manner regarding requirements for and limitations on the Project. With regard to subcontractor liens, City shall furnish to Architect, within fifteen (15) days after receipt of a written request, information necessary and relevant for Architect to evaluate, give notice of, or enforce lien.
- 27.2 City shall establish and update, if necessary, an overall Project budget, including Architecting and construction costs.
- 27.3 City shall furnish the services of consultants, including geotechnical Architects, when such services are requested by Architect, reasonably required by the scope of the Project, and agreed to by City.



- 27.4 City shall furnish all testing as required by law or the contract documents.
- 27.5 City shall furnish all legal accounting, auditing and insurance services as necessary for the Project to meet the City's needs and interests, after Architect has performed requisite Project management and oversight duties.
- 27.6 City shall provide prompt written notice to Architect if City becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in Architect's design or performance under this Contract.
- 27.7 City shall pay the sum of up to \$\_\_\_\_\_, in accordance with Section 3 of this Contract, to Architect in monthly installments made upon Architect's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect the progress made on the Project to date, on a pro rata basis.
- 27.8 City shall report the total amount of all payments to Architect, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.
- 27.9 City shall guarantee access to, and make all provisions for Architect to enter upon public and private property necessary for performance of the Scope of Work over which City exercises control.

## **28. Arbitration**

All claims, disputes, and other matters in question between the City and Architect arising out of, or relating to the contract documents, including rescission, reformation, enforcement, or the breach thereof, except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance the Oregon Uniform Arbitration Act, ORS 36.600 *et seq.* and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Lane County Circuit Court will establish rules to govern the arbitration. The City shall have the sole discretion as to whether or not dispute will be decided by arbitration rather than through the court process.

A claim by Architect arising out of, or relating to this Contract must be made in writing and delivered to the City not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the City within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the City will be considered by the City Council at the Council's next regularly scheduled meeting. At that meeting the Council will render a written decision approving or denying the claim. If the claim is denied by the Council, the Architect may file a written request for arbitration with the City. No demand for arbitration shall be effective until the City Council has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the City Council has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the Council's decision being binding upon the City and Architect.

Notice of demand for arbitration shall be filed in writing with the other party to the Contract. The demand for arbitration shall be made within the 30-day period specified above. The City, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, reject arbitration and require the other party to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may

be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

**29. Joinder**

Notwithstanding any contrary language in other documents or agreements related to services provided by Architect pursuant to this Contract, including contracts for construction services, either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact arising out of or related to this Contract and whose presence is required if complete relief is to be accorded. This Section applies to any and all claims, disputes, and other matters arising out of, or relating to this Contract, including but not limited to those claims, disputes, and other matters subject to litigation or arbitration.

**30. Attorney Fees**

If any suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as applicable costs and disbursements. Further, if it becomes necessary for City to retain the services of an attorney to enforce any provision of this contract without initiating litigation, Architect agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by the losing party.

**31. Successors and Assigns; Subcontractors and Assignments**

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

**32. Limitation of Liabilities**

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

**33. Foreign Contractor**

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

**34. Confidentiality**

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

**35. Force Majeure**

Architect shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control,

including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

**36. Waivers**

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

**37. Severability**

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

**38. Headings**

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

**39. Integration and Modification**

This Contract, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Contract. Any modifications or amendments to this Contract will only be effective when made in writing and signed by authorized parties for each party to this Contract.

**40. Authority**

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

**41. Certificate of Compliance with Oregon Tax Laws**

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

CITY OF COTTAGE GROVE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Authorized Signature

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## **Exhibit A**

### **Scope of Work**

**A. Project Background:**

The City of Cottage Grove owns the Cottage Grove Armory, a 31,000 square foot cast-in-place concrete structure originally built in 1931 as a National Guard Armory and community center. This building is on the National Register of Historic Places for its architecture and historic significance.

The City proposes to rehabilitate the building as a Community Center, while retaining as much of the historic character and historic fabric as possible. On March 23, 2015 the Cottage Grove City Council adopted the Armory Schematic Design, which includes a set of schematic plans for the restoration/rehabilitation of the building developed through a community-based design process. The City is now looking for an Architect/Architectural Firm to provide professional services, including Design Development and Contract Documents, Bidding and Contract Administration for the rehabilitation of the Armory, based upon the approved Schematic Design Plan and Final Report. Services may include project phasing recommendations, integration with a separate historic preservation grant(s), coordination of cost estimation services and enhanced construction observation.

**B. Scope of Work:**

The City anticipates that a full complement of professional service shall be provided by the Architect selected for this project. These services include, but shall not necessarily be limited to, those outlined below:

1. Design Development and Contract Document Phase of Services (Phase 1):
  - a. Review, confirm and refine Schematic Plan and update as needed.
  - b. Review options and make recommendations regarding phasing of construction, working closely with City's project manager to meet funding timeline requirements.
  - c. Provide complete construction drawings and specifications for final design including, but not limited to, working drawings, specifications, cost estimates, prospective bidders list, approvals (State and local authorities), technical addenda and clarifications for all of the following, as applicable:
    - i. Landscape/Site Design
    - ii. Structural Design
    - iii. Architectural Design
    - iv. Mechanical Design
    - v. Electrical Design
    - vi. Civil Design
    - vii. Energy Efficiency Design
    - viii. Potential phasing plan
  - b. Attend meetings to develop goals, explain options, and reach consensus on final plans.
  - c. Provide individual meeting minutes, as needed, for distribution to appropriate staff and Council members.
  - d. Draft construction schedule and recommendations for appropriate bidding categories.
  - e. Produce and review projected cash flow schedules for all aspects of Project.
  - f. Provide necessary cost estimates to satisfy statutory requirements and to permit the contractor(s) to perform basic services.
2. Construction Bidding Phase Services:
  - a. Ensure process and documents meet all applicable provisions of Oregon's Public Contracting Code, City Public Contracting Rules, and any applicable other requirements.

- b. Complete bid packet with all required construction documents, specifications, and contract terms and conditions.
  - c. Develop the necessary advertising for bid document distribution.
  - d. Assist City with creating contractor interest in bidding and performing construction work.
  - e. Make construction documents available to bidders.
  - f. Participate in any pre-bid conferences held with bidders for each division of work.
  - g. Respond to questions from contractors during the bidding process, and produce addenda to the bid documents, as needed.
  - h. Assist in evaluating bids.
  - i. Participate in post-bid interviews with apparent low bidders.
  - j. Develop award recommendations to City.
  - k. Advise City regarding necessary building permits and other governmental agency approvals.
3. Construction Phase Services (Phase 2):
- a. Monitor compliance with Oregon Public Contracting Code, City Public Contract Rule, and any other requirements.
  - b. Provide on-site observation and supervision of construction, as necessary.
  - c. Monitor and update construction drawings and occupancy schedules.
  - d. Respond to contractor requests for clarifications.
  - e. Receive change order requests and issue change orders upon City approval.
  - f. Review shop drawings, material samples, and expedite the review process.
  - g. Review payment and cost control procedures, including the following:
    - i. Subcontractors' Schedule of Values
    - ii. Subcontractors' Payment Application and Certification
    - iii. Subcontractors' Sworn Statements and Waivers of Lien, if applicable
    - iv. Purchase Order and Disbursement Summaries
    - v. Change Order Listings
    - vi. Budget Cost Summary Reports
  - h. Participate in progress meetings and provide progress reports of same.
    - i. As needed, meet with City staff to discuss activities which may affect operations.
    - ii. Weekly meetings with City staff and contractor(s).
    - iii. Monthly meetings for planning, coordination, and payments with City staff which will include status reports on Project, budget, change orders, and allowances for reimbursable expenses.
  - i. Prepare as-built drawings and review operating and maintenance manuals, warranties, and guarantees.
  - j. Ensure that construction and any repair work is completed as specified by the construction documents and meets all applicable codes and regulations.
  - k. Provide review and coordination of Project, including but not limited to mechanical and electrical systems.
  - l. Prepare punch lists, coordinate final inspections, review warranties, and recommend City acceptance and occupancy.

## **Exhibit B**

### **PUBLIC CONTRACTING CODE REQUIREMENTS For ORS 279C Personal Service Contract**

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the Work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the Contract shall promptly be paid.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. Contractor shall employ no person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, Contractor shall pay the employee at least time and one-half pay for: 1) all overtime in 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater, except for individuals under personal service contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime; or 2) work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G).
6. Pursuant to ORS 279C.520(2), the Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
7. Pursuant to ORS 279C.530(2), all employers, including Contractor, that employ subject workers who work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.
8. All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
9. The Contract may be canceled at the election of Owner for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
10. Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises or a business enterprise that is controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontractors.
11. Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.

12. In the performance of this Contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.
13. Pursuant to Owner's Public Contracting Rule 137-049-0880, the Owner may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records relating to the Contract.

## **Exhibit C**

### **Request for Proposal**



## **Exhibit D**

### **Architect's Proposal**