RESOLUTION 2018-09

A RESOLUTION OF THE GARIBALDI CITY COUNCIL ACTING AS LOCAL CONTRACT REVIEW BOARD ADOPTING FINDINGS AND AUTHORIZING THE CITY MANAGER TO DEVELOP A CONTRACT WITH OPEN ARCHITECTURE, FOR ARCHITECTURE/ENGINEERING SERVICES NECESSARY TO CONSTRUCT AND MANAGE COMMUNITY HALL BUILDING IMPROVEMENTS

WHEREAS, the City of Garibaldi upon receiving a loan from the United States Department of Agriculture Rural Development for Community Hall-Building-Parking-ADA-Utility Improvements; and

WHEREAS, the complexity of the project and certain unpredictable structural conditions indicate a potential for changes in the scope of the project once construction has actually begun; and

WHEREAS, the technical complexity of the project requires the coordination of multiple architect, engineering and construction disciplines; and

WHEREAS, the cooperation among the architect/engineer, building contractor and the city is important to the project's delivery on time and within budget; and,

WHEREAS, the city reasonably expects both substantial savings in construction cost and flexibility in construction scope that ensures the highest and best use of available funds; and,

WHEREAS, the City has issued a Request for Proposals (RFP) in conformance with the provisions of GMC § 3.10.030 for architectural and engineering; and,

WHEREAS, a scoring committee formed by the City Manager has independently reviewed and scored all the proposals submitted based on the criteria of the RFP issued by the City; and,

WHEREAS, this scoring committee has determined OPEN ARCHITECTURE, offers the best combination of value, experience and overall qualification relevant to the City's needs; and,

WHEREAS, the Garibaldi City Council acting as the Local Contract Review Board accepts this scoring committee's recommendation to contract with OPEN ARCHITECTURE for architectural and engineering services necessary to construct and manage community hall building improvements,

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF GARIBALDI RESOLVES AS FOLLOWS:

Section 1. The Council finds the recitals to this Resolution are relevant facts and incorporated herein as findings for this Resolution.

Section 2. The Council hereby selects OPEN ARCHITECTURE as the Architect of record for the Garibaldi Community Hall Improvement Project, and directs the City Manager to develop an agreement with OPEN ARCHITECTURE for the purpose of providing Architectural/Engineering services and managing this project for the City of Garibaldi.

Section 3. The document titled "City of Garibaldi Architectural/Engineering Services Contract" is hereby incorporated into this resolution as **Exhibit A**, and will be used to define the scope of services and costs agreed to between the City of Garibaldi and OPEN ARCHITECTURE.

Section 4. The Council will review, and consider approval of, a finalized contract as described in Section 3 of this resolution at its earliest convenience.

Section 5. This resolution is effective as of the date of its adoption by the City Council.

1 - A RESOLUTION OF THE GARIBALDI CITY COUNCIL ACTING AS LOCAL CONTRACT REVIEW BOARD ADOPTING FINDINGS AND AUTHORIZING THE CITY MANAGER AND THE CITY COUNCIL PRESIDENT TO CONTRACT WITH OPEN ARCHITECTURE, FOR ARCHITECTURE/ENGINEERING SERVICES NECESSARY TO CONSTRUCT AND MANAGE COMMUNITY HALL BUILDING IMPROVEMENTS

EXHIBIT A
CITY OF GARIBALDI
ARCHITECTURAL/ENGINEERING SERVICES CONTRACT

This Contract is by and between the City of Garibaldi ("City") and _____ ("Architect/Engineer") for the performance of architectural/engineering services for City.

A. RECITALS

City is in need of retaining the services of a qualified architect/engineer to design and oversee construction of facilities upgrades to City's existing facilities located at _____.

On _____, 2018, the City awarded this contract to _____, based upon its proposal dated _____, 2018.

B. CONTRACT EXHIBITS

The following exhibits are hereby incorporated by reference into this Contract:

Exhibit A – Scope of Work
Exhibit B – Oregon Architect/Engineer Public Contracting Code Requirements
Exhibit C – City's Request for Proposals for Architectural/Engineering Services
Exhibit D – Architect/Engineer's Proposal and Schedule of Rates and Charges

C. CONTRACT

1. Term

This Contract shall commence upon execution, and continue through final completion of Project, but no later than _____, 20__.

2. Scope of Work

Architect/Engineer shall provide all services and deliver all materials as specified in the attached Exhibits, which are hereby incorporated into this Contract by this reference, and as may be described by future addenda to this Contract.

3. Compensation

3.1 Compensation. Consultant will be paid by District on a time and materials basis, for work actually completed and invoiced as described in this section. Consultant shall complete its scope of work as defined in Exhibit A for up to a total not to exceed amount, including reimbursable expenses, of _____ ($_____). This maximum contract amount shall function as a limit on District contract payments. Consultant will not be entitled to receive as payment from District the difference between amounts invoiced for work completed and the maximum Contract amount provided in this section, if any.

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

3.3 Reimbursable Expenses. Reimbursable expenses shall be itemized and include expenses incurred by Consultant in the interest of the Project for: 1) Long distance communications; 2) Reproductions, presentations and work session handouts or other materials; 3) Postage and handling of documents; and 4) Expense of overtime work requiring higher than regular rates, if authorized by District.

4. Contractor Is an Independent Contractor

Architect/Engineer 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 various schedules and evaluate the quality of Architect/Engineer's completed work, City cannot and will not control the means and manner of Architect/Engineer's performance. Architect/Engineer is responsible for determining the appropriate means and manner of performing work. Architect/Engineer is responsible for all federal and state taxes applicable to compensation and payment paid to Architect/Engineer under the Contract and will not have any amounts withheld by City to cover Architect/Engineer's tax obligations. Architect/Engineer is not eligible for any City fringe benefit plans.

5. 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:
John O'Leary, City Manager
City of Garibaldi
P.O. Box 708
Garibaldi, OR 97118
503-322-3327
john@ci.garibaldi.or.us

Architect/Engineer: _____
_____
_____
_____
_____

6. Indemnification

Architect/Engineer shall indemnify, hold harmless, and defend City and its representatives, officers, directors, City Councilors, 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/Engineer's negligent performance and/or fault of Architect/Engineer, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of City and Architect/Engineer, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

Architect/Engineer shall defend City from claims covered under this section at Architect/Engineer's sole cost and expense until such time: (1) as 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) until City and Architect/Engineer mutually agree to allocate the liability.

7. Insurance Requirements

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

a. Comprehensive general liability insurance on Insurance Services Office (ISO) occurrence form CG 00 01, 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)
$4,000,000 – 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.

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.

c. Errors and Omissions insurance covering Architect/Engineer'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.

d. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.

7.2 Except as required in 7.1(d) 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.

7.3 Policies shall provide that City, its Council, Councilors, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 7.1(a) and a waiver of subrogation against them shall be obtained for all coverages.

7.4 All coverages under Section 7.1 shall be primary over any insurance City may carry on its own.

7.5 City 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.

7.6 All policies of insurance shall be issued by good, responsible companies who have a current A.M. best rating of not less than A: VII or other industry rating which is satisfactory to the City and that are qualified to do business in the State of Oregon.

7.7 Architect/Engineer 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/Engineer shall furnish City with executed copies of such policies of insurance. Architect/Engineer shall furnish City with at least 30 days' written notice of

cancellation of, or any 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.

8. Workers' Compensation

8.1 Architect/Engineer, 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.

8.2 Architect/Engineer 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/Engineer shall indemnify City for any liability incurred by City as a result of Architect/Engineer's breach of the warranty under this paragraph.

9. Hours of Employment

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

10. Assignment

Architect/Engineer 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/Engineer 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/Engineer'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/Engineer shall remain liable for all of its obligations under this Contract.

11. Labor and Material

Architect/Engineer 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.

12. Ownership of Work and Documents

All work performed by Architect/Engineer 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/Engineer, and it is agreed by the parties that such documents are works made for hire. Architect/Engineer 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/Engineer, without Architect/Engineer's involvement or consent, then Architect/Engineer shall not be responsible for the materials.

13. 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/Engineer. Upon termination under this paragraph, Architect/Engineer 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/Engineer. Pursuant to this paragraph, Architect/Engineer shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Architect/Engineer. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Architect/Engineer can show good cause beyond its control for the delay.

14. Termination for Cause

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

14.1 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.

14.2 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.

14.3 If any license or certificate required by law or regulation to be held by Architect/Engineer to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

15. Termination for Default

Architect/Engineer may terminate this Contract in the event of a breach of the Contract by the City. Prior to such termination, Architect/Engineer shall provide City written notice of the breach and intent to terminate. If City has not entirely cured the breach within fifteen (15) days of the date of the notice, then Architect/Engineer may terminate the Contract at any time thereafter by giving a written notice of termination.

If Architect/Engineer fails to perform in the manner called for in this Contract or if Architect/Engineer 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/Engineer setting forth the manner in which Architect/Engineer is in default. Architect/Engineer shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract.

16. Remedies

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

16.1 If terminated under paragraph 15 by City due to a breach by Architect/Engineer, 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/Engineer shall pay to City the amount of the reasonable excess.

16.2 In addition to the above remedies for a breach by Architect/Engineer, City also shall be entitled to any other equitable and legal remedies that are available.

16.3 If City breaches this Contract, Architect/Engineer's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Architect/Engineer is entitled.

16.4 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.

16.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Architect/Engineer shall immediately cease all activities related to the services and work under this Contract. As directed by City, Architect/Engineer 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.

17. Nondiscrimination

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

18. 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/Engineer 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 Tillamook 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/ENGINEER 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 protections under the Oregon Tort Claims Act.

19. Compliance with Laws and Regulations

Architect/Engineer 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/Engineer expressly agrees to comply with: (i) ORS 659.425; (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) City's performance under this Contract is conditioned upon Architect/Engineer'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/Engineer, its 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/Engineer shall adhere to all safety standards and regulations established by City for work performed on its premises or under its auspices.

20. Experience, Capabilities and Resources

By execution of this Contract, Architect/Engineer agrees that:

Architect/Engineer is an experienced architectural/engineering 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/Engineer has the capabilities and resources necessary to perform the obligations of this Contract.

Architect/Engineer is familiar with all current laws, rules, and regulations which are applicable to the design and construction of work which may fall within the scope of this Contract, and that all drawings, specifications, and other documents prepared by Architect/Engineer 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.

21. Drawings, Specifications and Other Documents

Architect/Engineer hereby agrees that it will, in a manner consistent with its standard of care defined in above in Section 20, prepare all drawings, specifications, and other documents pursuant to this Contract so that they are complete and that any 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.

22. Errors and Omissions

Architect/Engineer 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/Engineer 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/Engineer or its subconsultants. Architect/Engineer further agrees to assist City in resolving problems relating to any project designs or specified materials.

23. Contract Performance

Architect/Engineer shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. Architect/Engineer shall not be liable for delays that are beyond Architect/Engineer'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/Engineer's warranties or a default or defect in performance by Architect/Engineer that has not been cured. Architect/Engineer agrees that time is of the essence under this Contract.

24. 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/Engineer'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/Engineer shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Architect/Engineer shall provide full access to these records to City, and its duly authorized representatives in preparation for and during litigation.

25. Representations and Warranties

Architect/Engineer represents and warrants to City that: (1) Architect/Engineer 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/Engineer enforceable in accordance with its terms; (3) Architect/Engineer 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.

26. City Obligations

26.1 City shall provide full information in a timely manner regarding requirements for and limitations on projects and work tasks. With regard to subcontractor liens, City shall furnish to Architect/Engineer, within fifteen (15) days after receipt of a written request, information necessary and relevant for Architect/Engineer to evaluate, give notice of, or enforce lien.

26.2 City shall establish and update, if necessary, overall project budgets, including Architecture/Engineering and construction costs.

26.3 City shall furnish the services of consultants, including geotechnical architects/engineers, when such services are requested by Architect/Engineer, reasonably required by the scope of a project, and agreed to by City.

26.4 City shall furnish all testing as required by law or the contract documents.

26.5 City shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the City's needs and interests, after Architect/Engineer has performed requisite project management and oversight duties.

26.6 City shall provide prompt written notice to Architect/Engineer if City becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in Architect/Engineer's design or performance under the contract.

26.7 City shall pay Architect/Engineer in accordance with paragraph 3 and Exhibit D of this Contract, upon receipt of Architect/Engineer's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed, or progress made on a project to date, on a pro rata basis.

26.8 City shall report the total amount of all payments to Architect/Engineer, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.

26.9 City shall guarantee access to, and make all provisions for Architect/Engineer to enter upon public and private property necessary for performance of the Scope of Work over which City exercises control.

26.10 Extra work or work on contingency tasks is not permitted unless authorized by the City in writing. Failure of Architect/Engineer to secure written authorization for extra work shall constitute a waiver of all rights to an adjustment in the Agreement price or Agreement time.

27. Arbitration

All claims, disputes, and other matters in question between the City and Architect/Engineer arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance with Uniform Oregon 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 Tillamook 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/Engineer arising out of, or relating to this Contract must be made in writing and delivered to the City Manager not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the City Manager 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 Manager will be considered by the City Council at the next regularly scheduled meeting. At that meeting the City Council will render a written decision approving or denying the claim. If the claim is denied by the City Council, the Architect/Engineer may file a written request for arbitration with the City Manager. 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 City Council's decision being binding upon the City and Architect/Engineer.

Notice of demand for arbitration shall be filed in writing with the other party to the agreement. 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, to reject arbitration and require the Architect/Engineer to proceed through the courts for relief. If arbitration is allowed, 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 the award will not be subject to modifications or appeal except to the extent permitted by Oregon law.

28. 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 the 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/Engineer 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.

29. 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.

30. 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/Engineer shall not be liable for any consequential damages under this Contract.

31. Foreign Contractor

If Architect/Engineer is not domiciled in or registered to do business in the State of Oregon, Architect/Engineer 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/Engineer shall demonstrate its legal capacity to perform the work under this Contract in the State of Oregon prior to entering into this Contract.

32. Confidentiality

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

33. Force Majeure

Architect/Engineer 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.

34. 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/Engineer of the same or any other provision. City's consent to or approval of any act by Architect/Engineer 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/Engineer, whether or not similar to the act so consented to or approved.

35. 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.

36. 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.

37. 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.

38. 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.

39. Certificate of Compliance with Oregon Tax Laws

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

CITY OF GARIBALDI

By:_____
John O'Leary
City Manager
Date: _____

_____

By:_____
Authorized Signature
Title: _____
Date: _____

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Exhibit A

Scope of Work

SERVICES AND RESPONSIBILITY OF ARCHITECT/ENGINEER

A. Services shall be provided pursuant to City work task requests or as otherwise requested by City in writing. When authorized by City, the specific services which the Architect/Engineer shall furnish will generally consist of, but not be limited to, the following itemized services:

a. **Pre-Design/Schematic Design**

b. **Design Development**

c. **Construction Documents**

d. **Bidding**

e. **Construction Administration**

Exhibit B

Oregon Public Contracting Requirements

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 City 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 City 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 City's Public Contracting Rule 137-049-0880, the City 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

City's Request for Proposals for Architectural/Engineering Services

Exhibit D

Architect/Engineer's Proposal and Schedule of Rates and Charges

PASSED BY THE COMMON COUNCIL AND APPROVED BY THE CITY COUNCIL PRESIDENT, this 18th day of June 2018.

Suzanne McCarthy, Mayor

ATTEST:

John O'Leary, City Manager

2 - A RESOLUTION OF THE GARIBALDI CITY COUNCIL ACTING AS LOCAL CONTRACT REVIEW BOARD ADOPTING FINDINGS AND AUTHORIZING THE CITY MANAGER AND THE CITY COUNCIL PRESIDENT TO CONTRACT WITH OPEN ARCHITECTURE, FOR ARCHITECTURE/ENGINEERING SERVICES NECESSARY TO CONSTRUCT AND MANAGE COMMUNITY HALL BUILDING IMPROVEMENTS