

ADDENDUM

Addendum No.: 1
Project Name: Façade Restoration of the Woodburn Museum and Bungalow Theater
Project No.: 2019-005-28
Date: August 1, 2019
To: All Bidders

NOTE: This Addendum forms part of the Contract Documents and modifies the RFQ as noted below. Bidders submitting an offer must sign this form, acknowledging receipt of addendum, and supply it with their proposal. Failure to do so will subject the Bidder to disqualification.

INSTRUCTIONS TO BIDDERS:

1. Bidders shall provide a Certificate of liability insurance with the following minimum coverage:
 - A. General Liability on a per Project Basis
 - a. \$1,000,000 minimum Bodily Injury (BI)
 - b. \$1,000,000 minimum Property Damage (PD)
 - c. \$2,000,000 minimum Aggregate
 - B. Personal Liability - \$1,000,000 minimum
 - C. Auto Liability – BI & PD Combination - \$1,000,000
 - D. Pollution Liability - \$1,000,000 minimum of the application of herbicides
2. The selected Contractor shall enter into a Personal Service Agreement with the City of Woodburn. See attached sample of a Personal Service Agreement
3. This project is subject to BOLI PWR Laws , to conform to BOLI PWR found at: <https://www.oregon.gov/boli/WHD/PWR/Pages/July-1,-2019-PWR-Rates.aspx>

I have received, read and incorporated changes, per this addendum, in my proposed bid:

Signature

Date

SAMPLE CONTRACT AGREEMENT

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Woodburn, an Oregon municipal corporation (hereinafter referred to as "CITY"), and _____, a _____ (hereinafter referred to as "CONSULTANT").

WHEREAS, CITY needs certain professional consultant services; and

WHEREAS, CITY wants to engage CONSULTANT to provide these services by reason of its qualifications and experience; and

WHEREAS, CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein,

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 – SCOPE OF SERVICES

The Scope of Work to be performed by CONSULTANT under this Agreement is described in Exhibit A, which is attached to this Agreement. Additionally, CONSULTANT's proposal in response to _____ is incorporated by reference and are a part of this Agreement as if fully set forth.

SECTION 2 – DUTIES OF CONSULTANT

A. CONSULTANT shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its work.

B. CONSULTANT represents that it is qualified to furnish the services described in this Agreement.

C. CONSULTANT shall be responsible for employing or engaging all persons necessary to perform its services.

D. It is understood that _____ will be designated by CONSULTANT as the person providing services to CITY under this Agreement and that this designated person shall not be replaced without CITY's approval.

SECTION 3 – DUTIES OF CITY

A. CITY shall provide CONSULTANT the pertinent information regarding CITY's requirements for the Project.

B. CITY shall examine documents submitted by CONSULTANT and shall render decisions promptly, to avoid unreasonable delay in the progress of CONSULTANT'S work.

C. CITY certifies that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.

D. The contact person on the Project for CITY is designated as Public Works Director or assigned delegate. CITY shall provide written notice to CONSULTANT if CITY changes its contact person.

SECTION 4 – TERM

This Contract is effective on the date of last signature below and terminates three (3) years from that date, with an option to mutually renew the contract for up to two (2) additional one (1) year terms.

SECTION 5 – PAYMENT

Payment shall be made by CITY to CONSULTANT only for services rendered and upon submission of a payment request and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONSULTANT a fee not to exceed \$_____. Compensation shall be only for actual hours worked on the Project, at the rates specified in Exhibit B, and related direct expenses. CONSULTANT shall furnish with each bill for services an itemized statement showing the amount of services devoted to the Project by CONSULTANT as well as any agents or employees of CONSULTANT and any direct expenses.

SECTION 6 – TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason upon ninety (90) days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement upon receipt of said written notice.

Either party may terminate this Contract upon not less than thirty (30) calendar days written notice should the other party fail to substantially perform in accordance with the terms and/or conditions of this contract or any supplements thereof and if the performance is not cured within that 10-day period after written notice is given.

SECTION 7 – OWNERSHIP OF DOCUMENTS

All documents prepared by CONSULTANT in the performance of this Agreement, although instruments of professional service, are and shall be the property of CITY, whether the Project for which they are made is executed or not.

SECTION 8 – CONFIDENTIALITY

All reports and documents prepared by CONSULTANT in connection with the performance of this Agreement shall be considered as confidential by CONSULTANT until they are released by CITY to the public. CONSULTANT shall not make any such documents or

information available to any individual or organization not employed by CONSULTANT or CITY without the written consent of CITY before any such release.

SECTION 9 – INTEREST OF CONSULTANT

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 – CONSULTANT’S STATUS

It is expressly agreed that in the performance of the professional services required under this Agreement, CONSULTANT shall at all times be considered an independent contractor, under control of CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONSULTANT an agent or employee of CITY while providing services under this Agreement.

Section 11 – Indemnity

CONSULTANT agrees to hold harmless and indemnify CITY, its officers and employees from and against any and all claims, loss, liability, damage, and expense arising from the negligent, or claimed negligent, performance of this Agreement by CONSULTANT, its officers or employees. CONSULTANT agrees to defend CITY, its officers or employees against any such claims. This provision does not apply to claims, loss, liability or damage or expense arising from the sole negligence, or willful misconduct, of CITY.

Section 12 – Insurance

CONSULTANT shall provide and maintain:

A. Commercial General Liability Insurance, occurrence form, with a limit of not less than \$1,000,000 for each occurrence.

B. Automobile Liability Insurance, occurrence form, with a limit of not less than \$1,000,000.00 for each occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.

C. Workers Compensation in at least the minimum statutory limits.

D. All insurance shall:

1. Include CITY as an additional insured with respect to this Agreement and the performance of services in this Agreement.
2. Be primary with respect to any other insurance or self-insurance programs of CITY.
3. Be evidenced, prior to commencement of services, by properly executed policy endorsements in addition to a certificate of insurance provided to CITY.
4. No changes in insurance may be made without the written approval of CITY.

SECTION 13 – NONASSIGNABILITY

Both parties recognize that this Agreement is for the personal services of CONSULTANT and cannot be transferred, assigned, or subcontracted by CONSULTANT without the prior written consent of CITY.

SECTION 14 – RELIANCE UPON PROFESSIONAL SKILL OF CONSULTANT

It is mutually understood and agreed by and between the parties hereto that CONSULTANT is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement and that CITY relies upon the skill of CONSULTANT to do and perform the work in the most skillful manner, and CONSULTANT agrees to perform the work. The acceptance of CONSULTANT'S work by CITY does not operate as a release of CONSULTANT from said obligation.

SECTION 15 –WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money, which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement of any applicable law or ordinance.

SECTION 16 – STATE PUBLIC CONTRACT PROVISIONS

All requirements of ORS Chapters 279, 279A, 279B, and 279C including but not limited to the following, as applicable, are incorporated herein by reference.

A. If CONSULTANT fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Contract as such claim becomes due, CITY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due CONSULTANT by reason of the Contract. The payment of a claim in the manner authorized above shall not relieve the CONSULTANT or its surety from its obligation with respect to any unpaid claims.

B. CONSULTANT and its subcontractors, if any, are subject to Oregon Workers' Compensation Law, which requires all employers that employ subject workers who work under this Contract in the State of Oregon to comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. CONSULTANT shall ensure that each of its subcontractors, if any, complies with these requirements.

C. CONSULTANT shall, upon demand, furnish to the CITY, written proof of workers' compensation insurance coverage. CONSULTANT is required to submit written notice to the CITY thirty (30) days prior to cancellation of said coverage.

D. CONSULTANT shall use recyclable products to the maximum extent economically feasible in the performance of the contract.

E. CONSULTANT is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under this Contract.

F. CONSULTANT agrees and certifies that it is a corporation in good standing and licensed to do business in the State of Oregon. CONSULTANT agrees and certifies that it has complied and will continue to comply with all Oregon laws relating to the performance of CONSULTANT's obligations under this Contract.

G. CONSULTANT shall:

G.1 Make payment promptly, as due, to all persons supplying to the CONSULTANT labor and material for the prosecution of the work provided for in the contract documents;

G.2 Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Contract;

G.3 Not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished; and

G.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

H. The CONSULTANT shall promptly as due, make payment to any person, copartnership or association or corporation furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employee of such CONSULTANT, of all sums which the CONSULTANT agrees to pay for such services and all moneys and sums which the CONSULTANT collected or deducted from the wages of employees pursuant to any law, contract or Agreement for the purpose of providing or paying for such service.

I. The CONSULTANT shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29USC201 et. seq.).

J. An employer must give notice to employees who work on a contract for services 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 days per week that the employees may be required to work.

K. CONSULTANT will comply with 279.835 et seq. in the procurement of products and services from a nonprofit agency for disabled individuals.

L. CONSULTANT will use recycled products, as defined in ORS 279A.010(1)(ii), to the maximum extent economically feasible in the performance of the Contract.

SECTION 17 – NON-DISCRIMINATION CLAUSE

CONSULTANT agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Consultant also shall comply with the Americans with Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. CONSULTANT further agrees that:

1. During the performance of a contract, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, religion, color, sex or natural origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The CONSULTANT, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such CONSULTANT is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient to meet this requirement.
4. The CONSULTANT will include the provisions of the foregoing paragraphs in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

SECTION 18 – ATTORNEY FEES

In the event a suit or action is instituted to enforce any right guaranteed pursuant to this Agreement, the prevailing party shall be entitled to, in addition to the statutory costs and disbursements, reasonable attorney fees to be fixed by the trial and appellate courts respectively.

SECTION 19 – NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

TO CITY:
Public Works Department
190 Garfield Street
Woodburn, OR 97071

TO CONSULTANT:

SECTION 20 – AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated Agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, and agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and CONSULTANT.

SECTION 21 – GOVERNING LAW

This Agreement shall be governed by the laws of the State of Oregon.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement the day and year written.

CITY OF WOODBURN:

By:
Scott Derickson
Title: City Administrator
Date: _____

CONSULTANT:

By: _____
Title: _____
Date: _____