



City of Prineville

387 NE THIRD STREET ♦ PRINEVILLE, OREGON 97754

COMMUNITY DEVELOPMENT DIRECTOR

Phone: (541)447-5627 FAX: (541) 447-5628

EMAIL: rsites@cityofprineville.com

Web Site: or www.cityofprineville.com

March 19, 2008

TO INTERESTED PARTIES

The City of Prineville Oregon is requesting letters of interest and statements of Qualifications from qualified engineering persons, firms or teams meeting requirements of the request

PROFESSIONAL, TECHNICAL AND EXPERT SERVICES

for

“2008-09 Surveying Services”

Qualified individuals, firms or teams selected will be asked to enter into a contract with the City of Prineville. As required over time, proposals will be required for individual projects or work tasks, fee and schedules negotiated with the City prior to start of work. Construction costs of individual projects may range from \$50,000 to \$3,000,000. Technical services tasks may range from \$1,000 to \$5,000. The work, projects and efforts will be formed from current development needs and/or the City's budget. Funds may flow from Federal, State, local or bond sales and loans. Work is considered minor to complex in nature. It is the intent of the City to select up to 3 proposals for a Pool of Consultants for fiscal years 2008-2009 and 2009-2010.

Parties interested in receiving copies of the request documents electronically should contact Ricky Sites at (541) 447-2356 or rsites@cityofprineville.com or Cindy MacDonald at 447-2340 or cindym@cityofprineville.com City Hall, 387 NE Third, Prineville, OR 97754.

Deadline for filing of the Request for Qualifications is Thursday, April 17, 2008. 2:00 PM PSDST at the above address.

Ricky Sites
Community Development Director

Advertisement Date: March 19, 2008

City of Prineville, Oregon

RFQ NO. 109-2008

PROFESSIONAL, TECHNICAL AND EXPERT SERVICES

REQUEST FOR QUALIFICATIONS

for

“2008-09 Surveying Services”

QUALIFICATIONS DUE: Thursday, April 17, 2008, by 2:00 p.m.

Envelope(s) shall be sealed and marked with RFQ# and Project Title.
Submit one (1) original and (4) complete copies of the qualifications to:

City of Prineville
RFQ Selection
387 NE Third
Prineville, OR 97754

Refer questions to:

Eric Klann (or as otherwise designated by the City Manager)

387 NE Third

Prineville, OR 97754

Phone: (541) 447-2357

Fax: (541) 447-5628

Email eklann@cityofprineville.com

PRE-SUBMITTAL MEETING has been scheduled for __NONE__

GENERAL INSTRUCTIONS AND CONDITIONS

INVESTIGATION - The respondent shall make all investigations necessary to inform it regarding the service(s) to be performed under this request for qualifications.

SPECIAL CONDITIONS - Where special conditions are written in the Request for Qualifications, these special conditions shall take precedence over any conditions listed under the Request for Qualifications "General Instructions and Conditions".

CLARIFICATION OF REQUEST FOR QUALIFICATIONS - Any potential respondent requesting a clarification of the RFQ requirements must submit questions in writing to the person(s) shown in the **REFER QUESTIONS TO** section on the cover of the RFQ, or present them verbally at a scheduled informational conference, if one has been scheduled. The City must receive written questions no later than five (5) working days prior to the scheduled deadline for submitting qualifications. The City will issue a response in the form of an addendum to the RFQ, if a substantive clarification is in order.

Oral instructions or information concerning the request for qualification given out by others within the City including but not limited to: City Manager, employees or agents to prospective respondents shall not bind the City.

ADDENDUM – Any change to this RFQ shall be made by written addendum. The City is not responsible for any explanation, clarification or approval made or given in any manner except addendum.

CANCELLATION – The city reserves the right to modify, revise or cancel this RFQ. Receipt and evaluation of responses or the completion of interviews do not obligate the city to award a contract.

REJECTION OF SUBMITTED MATERIALS - The City reserves the right to reject any or all responses to the Request for Qualifications if found in the City's best interest to do so.

LATE RESPONSES - Responses and qualifications received after the scheduled closing time for filing will be returned to the respondent unopened.

EEO AFFIRMATIVE ACTION EMPLOYER - Respondents must comply with Federal and State of Oregon requirements.

CONFLICT OF INTEREST - A respondent filing materials and qualifications in response to this RFQ hereby certifies that no officer, agent or employee of the City who has a pecuniary interest in this Request for Qualifications has participated in the contract interviews on the part of the City, that the submitted materials and qualifications are made in good faith without fraud, collusion or connection of any kind with any other respondent of the same call for qualifications, and that the respondent is competing solely in its own behalf without connection with or obligation to, any undisclosed person or firm.

CONFIDENTIALITY – All information submitted by Proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records act (ORS 192.410 et seq.), except such portions of the proposals for which Proposers requests exception from disclosure consistent with Oregon Law. Any portion of a proposal that the Proposers' claims constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501(2) and ORS 192.502(4). No information or segments of any proposal shall be made public until the City has completed its selection process.

If a request to inspect the proposal is made, the City will notify the Proposers of the request. If the City refuses to release the records, the proposer agrees to provide information sufficient to sustain its position to the City attorney for the City of Prineville, who currently considers such appeals. If the City attorney orders that the records be disclosed, the city will notify the Proposers in order for the Proposers to take all appropriate legal action. The Proposers further agrees to hold harmless, defend and indemnify the City for all costs, expenses and attorney fees that may be imposed on the City as a result of appealing any decision regarding the Proposers records.

These "Request for Qualifications General Terms and Conditions" are not to be construed as exclusive remedies or as a limitation upon rights or remedies that may be or may become available under ORS Chapter 279.

RFQ TITLE: PROFESSIONAL, TECHNICAL AND EXPERT SERVICES FOR 2008-09 SURVEYING SERVICES

RFQ# 109-2008

PART I RFQ REQUIREMENTS

SECTION A GENERAL INFORMATION

- 1. INTRODUCTION** *The Public Works Department of the City of Prineville is responsible for managing the design and construction or review of multiple infrastructure improvements including but not limited to: water supply and storage systems, fire protection systems, sanitary and storm sewer systems, streets and roadways, bridges and in some cases projects involving the City's Railroad. This request for Qualifications seeks firm(s) that can assist the City in developing plans and special specifications for bidding and construction of numerous small projects on an annual basis*
- 2. SCOPE OF WORK** The City of Prineville, Public Works Department is requesting Statements of Qualifications from qualified professional land surveyors and civil engineering firms or teams.
- 3. PROJECT FUNDING** The anticipated cost for all potential projects herein described has not been determined, nor have all of the potential funding sources been identified. It is anticipated that Oregon Transportation Investment Act Funds, City General and Transportation/Sewer/Water funds, Local Improvement District Funds along with private participation are anticipated will become available.

SECTION B WORK REQUIREMENTS

- 1. TECHNICAL REQUIREMENTS** Quickly, simply and cost effectively, perform land surveying, feasibility, preliminary and final engineering design of simple to moderate complexity projects for water, sanitary and storm sewer, streets/roads and bridges. Work will be on an as needed basis, Scope and Fee to be negotiated on a project by project basis depending on expertise, availability and product delivery schedules.
Professional services required are likely to include: land surveying and legal descriptions, feasibility, preliminary and final design of plans, specifications and bid documents, engineering estimates, bidding support services, construction surveying and support services.

The selected consultant, firm or team will perform the selected and agreed tasks for projects and shall be expected to work closely with affected public works and other City representatives to quickly, simply and cost effectively accomplish these goals.
- 2. WORK PERFORMED BY THE CITY/OTHERS** Public Works or other City authorized representatives will provide the selected consultant direction and review of work products for the City of Prineville, by telephone or fax, or by e-mail on one days notice. City staff shall make available sufficient hours of staff personnel as are required to meet with consultant and provide such information as required. A project manager has been assigned by the City Manager and Department of Public Works to oversee the work and provide timely support as needed. For sewer and water projects, the City will provide a schematic design concept on the consultant's provided map page including storage tank, pump

stations, lift station locations; desired spacing of valves and manholes, service connection points and other miscellaneous design criteria.

Other specific duties that the City will perform include obtaining all permits using the consultant supplied application and support information. City representatives will also provide all contacts necessary with other agencies or property owners as may be required.

3. DELIVERABLES AND SCHEDULE

Deliverables shall be considered those tangible resulting work products which are to be delivered to the Public Works Department such as reports, draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings and reports. Deliverables and schedule for the projects shall be determined and agreed to on a project by project as needed basis. Generally, contract specifications shall be provided for reproduction as 8 1/2"x11" and plan sheets 11"x17", with disk back-up, GIS compatible electronics.

Scope and schedule for deliverables will be determined as each project is contracted for. All deliverables from the contract(s) will become the property of the City of Prineville.

4. PLACE OF PERFORMANCE

It is preferred that the work be performed "locally" which is defined as proximate to the Prineville area. Contract performance may take place in the City's facility, the consultant's facility, a third-party location or any combination thereof. Work may be performed outside the local area however strong communication and scheduling skills will be required. The City also requires a 2 hour response time commitment.

5. PERIOD OF PERFORMANCE

Work under a contract to be executed by consultant and City as part of this selection process shall be started in the year 2008 to 2011. Schedules for the specific projects shall be determined by the City as each project is defined and negotiated.

6. PROJECT REVIEW

On a day-to-day basis, the progress of the work will be managed by the City assigned project manager or other representative designated by the City during the contract scoping process.

In accordance with Oregon statutes, projects may require review and approval by other state agencies such as but not limited to DSL, DEQ, ODFW, ODOT, Oregon Drinking Water Division, Army Corp of Engineers,

7. PUBLIC SAFETY

Public safety may require approval of elements of land survey limiting or requiring approval of private property owners or ODOT/Crook County/City. The consultant shall anticipate delays in such cases and plan for access permission. The consultant's employees and agents shall carry sufficient identification to show by whom they are employed and display it upon request. The City project manager has the discretion to require the consultant's employees and agents to be escorted to and from any public office, facility or work site if national or local security appears to require it.

8. SPECIAL PROVISIONS

The responding firms must demonstrate proven ability to timely deliver survey, design and construction services commensurate with the scope of work defined above.

Respondents shall also include in the statement of qualifications, the manner and method they would utilize to deliver small to large projects of simple to moderate complexity to the City for bidding and construction. Construction costs of individual projects may range from \$50,000 to \$3,000,000. Technical services tasks may range from \$1,000 to \$5,000.

SECTION C

1. INDEX

ATTACHMENTS

NONE

2. PROJECT DATA

NONE

PART II

RFQ PREPARATION AND SUBMITTAL

SECTION A

SOLICITATION EFFORTS

1. PRE-SUBMITTAL MEETING

There will be no pre-submittal meeting for this project.

2. QUESTIONS AND CLARIFICATIONS

Questions and requests for clarification regarding this Request for Qualifications must be directed in writing, via mail or fax, to the City of Prineville as noted below at least seven (7) working days prior to the response due date. An addendum will be issued to all recorded holders of the RFQ if a substantive clarification is in order.

City of Prineville
RFQ Selection
Attn: Eric Klann, Engineer
387 NE Third
Prineville, Oregon 97754
Phone: (541) 447-2357
Fax: (541) 447-5628

3. ADDITIONAL INFORMATION

Questions regarding the project may be directed to Same as 2 above

SECTION B

SUBMISSION OF MATERIALS

1. RESPONSES DUE

All required copies of the submittal materials must be received no later than 2:00 PM, Thursday *PDST* on , April 17, 2008 at 387 NE. Third, Prineville, OR 97754. Any submittal materials received after the deadline will not be considered. Materials received after the scheduled closing time/date will be returned to the sender unopened.

2. RESPONSE ORGANIZATION

The qualification materials and submittal materials must be organized in sections containing the following:

- ✓ Description of Firm. Briefly describe your firm's or team's legal structure, areas of expertise, length of time in business, number of employees, and other information that would be helpful in characterizing the firm. Provide the address of the main office (for legal purposes) and the address of the office that will manage the project. Identify any sub consultants that you would propose to include as a part of a project or who would be available as specialists on a project; provide the same information for any sub consultants as previously described for your firm's legal structure.
- ✓ Experience. Briefly describe other projects executed by your firm that demonstrate relevant experience. Please list some public or private sector

clients for whom you have performed similar work in the past five (5) years. For each project mentioned, include the name, address and phone number of a person who can be contacted regarding your performance on the project. When submitting projects for which your firm worked in an auxiliary capacity or in a joint venture or partnership, include the name of the lead firm. Please remember that any extensive descriptions of vaguely related projects are discouraged and could negatively impact the overall outcome of the evaluation. Submittals of project experience relating to small projects similar to the range of complexity, cost and locality described elsewhere in this request are encouraged.

- ✓ Personnel. Provide a brief professional resume for the key people proposed to be assigned to the project (including any important sub consultants), and describe their relevant related experience. Describe key personnel's proposed roles and responsibilities on this project. Submittals must identify a proposed project manager who would be responsible for the day-to-day management of project tasks and would be the primary point of contact with your firm. Identify who the second level production person will be, provide a description of their experience as it relates to the project at hand. An organizational chart of the project team may be appropriate.
- ✓ (5) copies of the qualification submittals must be received by the City of Prineville. Spiral or other bindings and plastic covers are not to be used, and there should be no dividers, table of contents, or additional pages beyond the number of internal pages allowed. One page will be considered to be one side of a single 8-1/2" x 11" sheet. Respondents submitting more than the specified number of pages may be considered non-responsive. Lack of response to any of the criteria may constitute a non-responsive submittal. Respondents may use both sides of a single sheet of paper for conservation purposes, and are encouraged to do so (if sheets are printed on both sides, it is considered to be two pages).
- ✓ Brochures or other supporting material are discouraged as part of this request.
- ✓ Letter of Interest. A signed Letter of Interest shall be included with the RFQ. The letter shall name the person(s) authorized to represent the consultant in any interviews and the name of the person(s) authorized to sign any contract, which may/may not result. A legal representative of the consulting firm, authorized to bind the firm in contractual matters must sign the Letter of Interest.

3. QUALIFICATION SUBMISSION

Responses must be clear, succinct and not exceed 5 pages. Respondents who submit more than the pages indicated may not have their proposal read or considered. Spiral or other bindings and plastic or glossy covers shall not to be used, and there shall be no dividers, table of contents, or additional pages beyond the number of internal pages allowed (note: one page is considered to be one side of a single 8-1/2" x 11" sheet. Lack of response to any of the criteria may constitute a non-responsive response. **PDF format disk of submittal is strongly encouraged.**

All responses will be evaluated on the completeness and quality of the content. Only those respondents providing complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail.

OPTIONAL: Responses must follow the format outlined in this RFQ. Additional materials in other formats or pages beyond the stated page limit will not be considered.

4. COST OF RESPONDING

The cost for compiling responses to an RFQ and preparing for and attending an interview will be borne solely by the Consultant. At no time will the City provide reimbursement for submission of a response. The submittals will be evaluated on the completeness and quality of the content. Only those respondents who supply complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to details. All submittals, qualification materials and addendum attachments will become part of the public file on this matter, without obligation to the City.

PART III

EVALUATION OF THE RFQ

SECTION A

REVIEW AND EVALUATION

1. EVALUATION REVIEW COMMITTEE

An evaluation review committee comprised of 4 persons with expertise in this particular area have been appointed to evaluate the qualifications received. The committee will score and rank the responses based upon the information submitted in accordance with the following factors and criteria. **The City will not identify the evaluation committee to any respondents prior to completion of the review process.**

History and/or capability to timely perform the work and project

15

Relevant project experience

15

Qualifications and diversity of project team

15

Familiarity with area and potential project

25

Percent of work performed locally

15

Team element costs to include but not be limited to:

- 1) Survey Team - hourly composite cost including transportation and equipment elements.
- 2) Principal and management hourly costs
- 3) Engineering personnel and hourly cost
- 4) Drafting and technical personnel and hourly cost
- 5) Indirect Costs if not included in 1 to 3 above.
- 5) Overhead cost as a percent if not included in 1 to 4 above.
- 6) Travel costs if applicable
- 7) Reproduction costs
- 8) Other costs relevant

15

TOTAL

100 points

NOTE: References from the selected respondent(s) will be contacted.

2. DEVELOPMENT OF THE SHORTLIST

The Committee expects to evaluate all qualifications and submitted responses and may develop a shortlist of the top respondents. If a shortlist processed is determined to be necessary, an interview process will be used. The shortlist of respondents will be ranked based upon the information provided in their responses. The City may select the broadest based set of firms or teams to meet its needs.

3. INTERVIEW PROCESS

The short list of candidates may be selected and oral interviews held if deemed necessary by the evaluation committee. If interviews are held, the respondent(s) will be asked to demonstrate their capability to the evaluation panel. The scores from the written evaluation will be re-evaluated as a result of the interviews and the revised score will be used to select the respondent with the highest revised score. However, no additions, deletions or substitutions will be made to the RFQ at that time. At the discretion of the evaluation committee, the Committee will conduct interviews with the top ranked, most qualified respondent(s) should it be deemed in the best interest of the City to do so. If interviews are undertaken, the evaluation committee will evaluate the participants based upon the criteria and weighting identified in Part III, Section A1 above.

The resulting scores from the interviews will be evaluated of and in their own right and will then be added to the previous scores from the evaluation of the RFQ response.

4. FORM OF CONTRACT

The selected consultants and teams will be required to enter into an initial contract with the City in the form attached to this Request. Individual projects to be completed will be negotiated with the selected consultant on a project by project basis.

5. ADDITIONAL WORK

Selection of a contractor under this process shall not preclude the City in its best interest, from conducting additional selection processes for more complex or larger projects in the course of the year, solely at the City's discretion.

PART IV

CONTRACT

CITY OF PRINEVILLE PERSONAL/PROFESSIONAL, TECHNICAL, OR EXPERT SERVICES CONTRACT

RFQ NO. 109-2008

REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL,
TECHNICAL AND EXPERT SERVICES

for

“2008-09 Surveying Services”

This Contract is between the City of Prineville, hereafter called **Agency**,

And

Phone (____)_____

FAX: (____)_____

Email:_____

Hereafter called **Contractor**.

Agency's Contract Administrator for this Contract is

Cindy MacDonald.
City of Prineville
387 NE Third Street
Prineville OR 97754
541-447-2340
541-447-5628
cindym@cityofprineville.com
www.cityofprineville.com

Effective Date and Duration

This contract shall become effective on _____ at which every party has signed this contract, whichever is later.) This contract shall expire, unless otherwise terminated or extended, on _____. This agreement shall be subject to termination by either party on ten (10) working days of prior written notice.

Statement of Work

Contractor shall perform the work (the “Work”) as set forth in the Statement of Work, which includes the delivery schedule for such Work, and that is attached hereto as Exhibit A. Contractor shall perform the Work in accordance with the terms and conditions of this Contract.

Consideration

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

(b) Interim payments shall be made to Contractor according to the schedule identified in EXHIBIT A.

(c) Any additional services not covered by this agreement, or related to work on other current or planned projects, can be added to this agreement at the direction of the City of Prineville. Services can be done at the hourly rates in effect at the time of the proposed services or on an agreed to lump sum basis.

(d) City will pay only for completed Work that is accepted by City.

Contract Documents. This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Required Insurance), Exhibit C (Independent Contractor Certification Statement), Exhibit D (the RFP, or other procurement document, if any) and Exhibit E (the Proposal, or other binding Contractor solicitation submission, if any).

[**AGENCY USER**-it may be appropriate to include additional Exhibits if additional documents are necessary to describe Contractor's obligations, or it may not be necessary to use all of the Exhibits listed here. Consult with City of Prineville if you have any questions.]. Exhibits A are attached hereto and incorporated herein by this reference.

Terms and conditions listed on pages 13-22.



CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE

a. Contractor Tax Identification Information. Contractor shall provide Contractor's Social Security number or Contractor's federal tax ID number and the additional information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(3). Social Security Numbers provided pursuant to this Section will be used for the administration of state, federal and local tax laws.

Name (tax filing): _____

Address: _____

Citizenship, if applicable: Non-resident alien Yes No

Business Designation (check one):

Limited Partnership Limited Liability Company

Limited Liability Partnership Sole Proprietorship Other

Federal Tax ID#: _____ or SSN#: _____

Agency may report the information set forth above to the Internal Revenue Service (IRS) under the name and social security number or taxpayer identification number provided.

b. Certification. The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws named in ORS 305.380(4), including without limitation the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue, (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the supplied Contractor data is true and accurate.

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

CONTRACTORS: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY CITY APPROVALS

CONTRACTOR

By: _____ Title: _____ Date: _____

Facsimile number: _____ Federal Tax Number _____

Oregon/State Number _____

CITY

Authorized Signature: _____ Title: _____ Date: _____

Approved for Legal
Sufficiency _____

This contract is between the City of Prineville, acting by and through its Elected Officials, hereafter called "City," and _____ hereafter called Contractor.

CITY OF PRINEVILLE SIGNATURES

Approved by Authorized City Representative:

Official or _____ Date _____ Elected

Approved as to form
By City Attorney:

Office of City Attorney _____ Date _____

**CITY OF PRINEVILLE
STANDARD CONTRACT PROVISIONS FOR
PROFESSIONAL, TECHNICAL & EXPERT SERVICES (MANDATORY PROVISIONS)**

1. Access to Records

The Contractor shall maintain, and the City of Prineville ("City") and its duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies in addition to the contract initial requirements shall be reimbursed by the City.

2. Audits

(a) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement and during the three (3) year period established by section 1, **Access to Records**. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

(b) If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City.

3. Effective Date and Duration

The passage of the contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this contract with respect to any default or defect in performance that has not been cured.

4. Funds

Contractor shall not be compensated for Work performed under this Contract by any other agency. The City of Prineville certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract.

5. Early Termination of Agreement

(a) The City and the Contractor, by mutual written agreement, may terminate this Agreement at any time.

(b) The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

(c) Either the City or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate.

If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

6. Payment on Early Termination

(a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Agreement** hereof, the City shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.

(b) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section.

(c) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), **Remedies**.

(d) In the event of early termination all of the Contractor's work product will become and remain property of the City.

7. Remedies

(a) The remedies provided to the City under section 5, **Early Termination of Agreement** and section 7, **Remedies** for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies

that are available.

(b) In the event of breach of this Agreement by the City, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 5(c), **Early Termination of Agreement** and section 6(a), **Payment on Early Termination** hereof.

8. Subcontracts and Assignment

Contractor shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the City.

Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

9. Compliance with Applicable Law

In connection with its activities under this Agreement, Contractor shall comply with all applicable federal, state and local laws and regulations. Contractor shall complete Exhibit C Independent Contractor/Workers' Compensation Insurance Questionnaire, which is attached hereto and by this reference made a part hereof.

9a. Indemnity - Claims for Other than Professional Liability

Contractor shall defend, save, and hold harmless the City of Prineville, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the negligent or willfully malicious activities of Contractor or its subcontractors, agents or employees under this agreement.

9b. Indemnity - Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Prineville, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement.

9c. Indemnity - Standard of Care

If Contractor's services involve engineering or consulting, the standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time and at the place such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation.

10. Insurance

Contractor shall maintain insurance as set forth in Exhibit B, which is attached hereto.

11. Ownership of Work Product

All work products of the Contractor which result exclusively from this contract as "work for hire" are the exclusive property of the City. The contractor may keep copies of such documents as it deems necessary.

12. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub I. No. 101-336) including Title II of that Act, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

13. Successors in Interest

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

14. Severability

The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal

or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

15. Waiver

The failure of the City to enforce any provision of this contract shall not constitute a waiver by the City of that or any other provision.

16. Errors

The Contractor shall perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

17. Governing Law

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this contract must be brought in circuit court in Crook County Oregon.

18. Amendments

All changes to this contract, including changes to the scope of work and contract amount, must be made by written amendment and approved by the City Manager to be valid.

19. Business License

The Contractor shall be licensed and authorized to practice in the State of Oregon.

20. Prohibited Interest

(a) No City officer or employee or representative during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

(b) No City officer or employee or representative who participated in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

21. Payment to Vendors and Subcontractors

The Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

Merger Clause

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE IF MADE, SHALL BE EFFECTIVE ONLY IN SPECIFIC INSTANCES AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE OR SHE HAS READ THIS CONTRACT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

OPTIONAL PROVISIONS (selected by City Project Manager)

22. Arbitration: /___/ Not Applicable /x/ Applicable (consult with City Attorney's Office before finalizing as applicable)

(a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the City within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the State of Oregon. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Prineville, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for the Crook County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the City. Insofar as the Contractor and the City legally may do so, they agree to be bound by the decision of the arbitrator.

(b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Agreement for undisputed portions of work.

23. Progress Reports: // Applicable / Not Applicable

The Contractor shall provide monthly progress reports to the Project Manager. If applicable, Exhibit A should list what information the Contractor must include in monthly progress reports.

24. Contractor's Personnel: // Applicable // Not Applicable

The Contractor shall assign the following personnel to do the work in the capacities designated: If applicable, list selected personnel in Exhibit A.

25. City agrees that Contractor's total liability to City for any and all damages whatsoever arising out of or in any way related to this Contract from any cause, including but not limited to negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to Contractor.

In no event shall Contractor be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought even if Contractor has been advised of the likelihood of such damages, and notwithstanding any failure of essential purpose of any limited remedy.

26. Independent Contractor; Responsibility for Taxes and Withholding

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

(b). If Contractor is currently performing work for the City of Prineville or the federal government, Contractor by signature to this Contract, represents and warrants that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract.

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

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

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

28. Representations and Warranties.

a. Contractor's Representations and Warranties. Contractor represents and warrants to City that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession, (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work, (5) all computer hardware and software delivered under this Contract will, individually and in combination, correctly process, sequence, and calculate all date and date-related data for all dates prior to, through and after January 1, 2000,

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

29. Records Maintenance; Access. Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Owner and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Contractor that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

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

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

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

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

against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

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

35. Governing Law; Venue; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (and/or any other department of the City of Prineville) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Crook 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. In no event shall this section be construed as a waiver by the City of Prineville of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. **CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

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

EXHIBIT A

SCOPE OF SERVICES

Statement of the Work and Payment Schedule

Contractor agrees to perform services as an independent contractor. Contractor's duties under this agreement shall include:

To be determined

Payment

- a. The maximum amount payable under this contract is \$_____

Contractor shall send invoices to Accounts Payable Department. Invoices must describe the work performed; deliverables completed and amounts due as follows:

1. Submit on letterhead. Otherwise show company name, address, phone and fax numbers
2. Invoices must be submitted monthly. Invoices billing for work over 3 months old may not be paid.
3. Show City's Contract Number or P.O. Number
4. Invoice date must be current date.
5. Specify Invoice Number or Billing Number
6. Invoices to be addressed to the Contract Manager's attention.
7. Itemize all tasks, deliverables and/or services performed; hours expended and percent complete, where applicable, and dates of activities invoiced.
8. Show all payments to date outstanding items and balance to completion of contract.
9. Monthly progress reports must accompany invoices. A Contract Summary sheet will be prepared for all contracts that have Task Orders.
10. All billings for Change Orders and Amendments to the Basic Contract will be submitted as separate invoices.
11. Change Order and Amendment invoices will use the Basic Contract or P.O. number followed by a letter designation: (Ex. 100001 Basic Contract will use 100001A for the first Change Order or Amendment).
12. All reimbursable expenses must be submitted with receipts.

Any request for sub consultant or subcontractor payments must include a copy of their invoice signed as to approval by the Prime contractor.

EXHIBIT B

INSURANCE REQUIREMENTS

INSURANCE (The City's Representative must answer and initial 2, 3, and 4 below)

During the term of this contract Contractor shall maintain in force at its own expense, each insurance noted in 1 through 4 below, unless waived:

1. Workers Compensation insurance in compliance with ORS 656.017, which requires employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).

2. General Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract.

Attached or Waived by City Attorney

3. Automobile Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate for Bodily Injury and Property Damage, including coverage for owned, hired, or non owned vehicles, as applicable:

Attached or Waived by City Attorney

4. Professional Liability insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract.

Attached or Waived by City Attorney

5. On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Contractor or its insurer(s) to the City.

6. Certificate of Insurance. As evidence of the above required insurance coverage's, the Contractor shall furnish acceptable insurance certificates to the City at the time Contractor returns the signed contract. The insurance policies described in paragraphs 2 and 3 above shall name the City of Prineville and its agents, officers, and employees as additional insured's, but only with respect to the contractor's services to be provided under this Contract. The Certificate will specify all of the parties who are Additional Insured and will include the 30-day cancellation clause that provides that the insurance shall not terminate or be cancelled without 30 days written notice first being given to the City. Insuring companies or entities are subject to City acceptance. If requested, complete policy copies shall be provided to the City. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

EXHIBIT C¹

**INDEPENDENT CONTRACTOR CERTIFICATION
(OAR 125-246-0330(2))**

PERSONAL SERVICES CONTRACT No. 109-2008

Part A. CONTRACTOR IS AN INDEPENDENT CONTRACTOR

(An Independent Contractor Certification is required, regardless of corporate status. OAR 125-246-0330(2) (b).)

1. I am free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;
2. I am licensed under ORS Chapters 671 or 701 to provide the services, if such license is required under ORS Chapters 671 or 701.
3. I am responsible for obtaining other licenses or certificates necessary to provide the services.
4. I am customarily engaged in an independently established business because _____ of the following requirements are satisfied:
 - _____ A. I maintain a business location:
 - 1) That is separate from the business or work location of the person for whom the services are provided; or
 - 2) That is in a portion of my residence, and that portion is used primarily for business.
 - _____ B. I bear the risk of loss related to the business or the provision of services as shown by factors such as:
 - 1) Entering into a fixed-price contract;
 - 2) Being required to correct defective work;
 - 3) Warranting the services provided; or
 - 4) Negotiating indemnification agreements, or purchasing indemnification liability insurance, performance bonds or errors and omissions insurance.
 - _____ C. I provide contracted services for two or more different persons within a 12-month period, or routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
 - _____ D. I make a significant investment in the business, through means such as:
 - 1) Purchasing tools or equipment necessary to provide the services;
 - 2) Paying for the premises or facilities where the services are provided; or
 - 3) Paying for licenses, certificates or specialized training require providing the services.
 - _____ E. I have the authority to hire other persons to provide or to assist in providing the services and have the authority to fire those persons.

(Section 4 does not apply if a Person files a Schedule F as part of an income tax return and the Person provides farm labor or farm services that are reportable on Schedule C of an income tax return.)

Contractor Signature _____ Date _____

Name: _____

Title: _____

(City completes Part B below after the Contractor completes Part A above.)

¹ This Certification is limited to Oregon law as cited within its form and may not apply under other law, including but not limited to Internal Revenue, other federal, or other state laws (other law). Parties must determine whether other law applies.

Part B. AGENCY STATEMENT

ORS 670.600. Independent Contractor Standards. As used in various provisions of ORS chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an Independent Contractor if the standards of this section are met. OAR 125-246-0335 states that if a Contractor is not an Independent Contractor, the City may not enter into a Personal Services Contract with the Contractor; instead, the City must follow personnel policies for employment options.

The representative of the City understands and states, to the best of his or her knowledge, that the Contractor and the contracted work should meet the following standards:

1. Although City may (a) determine and modify the delivery schedule for Services to be performed and (b) evaluate the quality of the completed performance, City cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract; and
2. Contractor is not an "officer", "employee", or "agent" of the City as those terms are used in ORS 30.265.

City Representative's Signature _____ Date _____

Name: Ricky Sites

Title: Community Development Director

EXHIBIT D

(RFQ) OR OTHER PROCUREMENT DOCUMENTS IF ANY)

EXHIBIT E

(PROPOSAL, OR OTHER BINDING CONTRACTOR SOLICITATION SUBMISSION, IF ANY)