

A scenic view of a lake with a forested mountain in the background and a kayak in the foreground. The kayak is orange and white with a grey deck and a black bag on it. The water is blue and calm, and the sky is clear.

City of Lowell, OR

Request for proposals

Professional auditing services

Issued: July 19, 2023

Table of Contents

Section 1: Background information.....	1
General description.....	2
Points of contact.....	2
RFP responses.....	2
Tentative schedule for selection process.....	3
Proposal evaluation	3
Contract duration.....	3
Acceptance or rejection and negotiation of proposals.....	4
Section 2: Scope of auditor services	4
General.....	4
Basic reports to be issued.....	4
Additional reports to be issued dependent on applicability.....	4
Supplemental reports/studies.....	5
Standards to be followed	5
Special consideration	5
Working paper retention and access to working papers.....	5
Assistance to be provided by the City of Lowell	6
Section 3: Proposal requirements.....	6
Proposal requirements.....	6
Minimum content of responses.....	6
Attachment A: Fee proposal.....	8
Attachment B: Personal service audit contract	10



City Administrator's Office
P.O. Box 490 Lowell, OR 97452
Phone: 541-937-2157
Email: jcaudle@ci.lowell.or.us

1. Background Information

General Information

The City of Lowell ("City") is located 20 miles southeast of Eugene in Lane County. The City provides a full range of services for its estimated population of 1,235. Those services include: water and wastewater utilities, parks, library, municipal court, streets maintenance, building inspections through a contract with Northwest Code Professionals, law enforcement services through a contract with the City of Oakridge, and planning and zoning services through a contract with Lane Council of Governments.

The City administers its accounting functions through a contract with an independent contractor. This contract accountant provides various services to the City, including monthly bank reconciliations, payroll tax reporting, fixed asset accounting, entering adjusting entries, and preparing monthly financial reports. The contract accountant also prepares the City's annual financial statements and collaborates with the auditor through the audit process.

The City Clerk handles most day-to-day accounting functions, including receiving and recording payments, preparing and mailing utility bills, processing the City's bi-monthly payroll, processing accounts payable, and so on.

The City's accounting software is Caselle, with the following modules: accounts payable, animal licensing, asset management, backflow management, cash receipting, check on demand, general ledger, maintenance orders, payroll, utility management, and system management. The City's Caselle subscription allows third-party access to Xpress Bill Pay so that citizens can make payments using an online portal.

The City prepares its financial statements using a modified cash basis of accounting. Under this basis of accounting, the City recognizes assets, liabilities, net position/fund equity, revenues and expenditures when they result from cash transactions with a provision for capital assets and depreciation, recognition of long-term debts, and utility deposits.

The audited annual financial statements for previous years are available here:

<https://www.ci.lowell.or.us/administration/page/audit-0>

Budget documents for previous years and the current 2023-2024 fiscal year are available here:

<https://www.ci.lowell.or.us/administration/page/budget>

Selected financial indicators and workload measures.

Adopted budget for FY 2023-2024	\$4,072,297
Adopted budget for FY 2022-2023	\$4,927,946
# bank and cash management accounts	2
# checks processed in FY 2022-2023 from check register	756
# cash receipts processed in FY 2022-2023 from cash receipt register	1,047
# full-time equivalent employees in FY 2023-2024	6.38
# utility (water/sewer) customers	533
# funds in FY 2022-2023	13

General Description

The City of Lowell is seeking proposals for the audit of its annual financial statements from qualified certified public accounting firms. A complete description of services to be provided is described under Section 2. The first reporting period to be audited is July 1, 2022, through June 30, 2023, extending through the next four subsequent fiscal years.

Points of Contact

Questions, inquiries, or comments regarding this Request for Proposals (“RFP”), should be directed to:

Jeremy Caudle, City Administrator
jcaudle@ci.lowell.or.us
(541) 937-2157

RFP Responses

Your proposal must be received no later than Monday, August 21, 2023 at 4:00 pm. Responses should be emailed to jcaudle@ci.lowell.or.us (in PDF or MS Word) or mailed to the following address:

City of Lowell
Attn: Jeremy Caudle, City Administrator
PO Box 490
Lowell, OR 97452

Emailed proposals will not be deemed received until a confirmation email sent by the primary point of contact is received in reply to the submitted proposal, confirming the emailed proposal was received and the format was readable.

Any amendments to this RFP will be in writing and will be issued to all persons or businesses that have indicated an interest to receive RFP addenda or have obtained the proposal materials. The addenda will be posted on the City’s Bid Management site at <https://www.ci.lowell.or.us/rfps> and issued by email to the address furnished by those responding to this announcement. Your proposal must acknowledge receipt of all addenda issued either when you submit your proposal or separately prior to opening. No proposal will be considered that is not responsive to any issued addenda.

Tentative Schedule for Selection Process

Proposals due:	August 21, 2023 at 4:00 pm
Interviews (tentative):	August 24, 2023
Contract finalized with apparent successful bidder:	August 31, 2023
City Council approval of contract:	September 5, 2023

This is a tentative schedule and is provided as a courtesy to potential proposers. The actual schedule may vary from the one provided above without notice to potential proposers. Any changes made to the closing date of the RFP will be made in the form of an addendum provided to all potential proposers who have received RFP documents.

Proposal Evaluation

The following criteria will be used to evaluate proposals and select the most qualified certified public accounting firm:

Evaluation Criteria	Scoring
Firm’s municipal audit expertise and experience and qualifications of key personnel	30%
Audit approach and schedule	20%
References	20%
Fees for service	20%
Differentiators	10%

The selection team will review the applications and select the most qualified proposal based on the evaluation criteria listed above. If deemed necessary by the selection team, the team will invite the most qualified proposers to interview.

Contract Duration

The selected certified public accounting firm will be designated as the City’s auditor for a five-year term. The City of Lowell reserves the right to extend the contract beyond the original period, negotiating each year separately as to price and work performed.

Acceptance or Rejection and Negotiation of Proposals

The City of Lowell reserves the right to reject any or all proposals, to waive any irregularities in the RFP, to accept or reject any item or combination of items in a proposal in accordance with ORS 279B.100, to request additional information or clarifications from respondents, and to negotiate or hold interviews with any one or more of the respondents. By requesting proposals, the City is in no way obligated to award a contract or to pay expenses of the proposing firms in connections with the preparation or submission of a proposal. Furthermore, the City reserves the right to reject any and all proposals prior to execution of a contract, with no penalty to the City, if doing so in the public interest. Any protest or objection of award must comply with ORS 279A.225.

2. Scope of Auditor Services

General

The City of Lowell is requesting proposals from qualified certified public accounting firms, duly authorized to practice as such by the State of Oregon, to audit the City's financial statements beginning with the fiscal year ending June 30, 2023, and extending through the next four subsequent fiscal years.

The City of Lowell desires the auditor to express opinions on the fair presentation of the City's basic financial statements, in conformity with the audit standards of the Oregon Secretary of State, Oregon Board of Accountancy, Oregon Society of Certified Public Accountants, and other provision of state law. The auditor will also be responsible for performing certain limited procedures involving required supplementary information and other supplementary information.

The selected auditor will submit for management's review a draft of all reports. The selected auditor will incorporate, as part of the basic proposal, meeting time with the City Administrator, accounting staff, and City Council for the purpose of discussing the audit, management letter, and conclusions.

Basic Reports to be Issued

Upon completion of the audit of the financial statements, the auditor will issue the following:

- Independent Auditor's Report
- AU-C 260 Letter to Those Charged with Governance
- AU-C 260 Letter: including Findings, statements, observations, opinions, comments and recommendations
- Audit Comments and Disclosures Required by State Regulation
- The auditor will be expected to print eight bound hardcopies, and an electronic copy, of the final audited financial statements and related reports.

Additional Reports to be Issued Dependent on Applicability

- AU-C 265 Communicating Internal Control Related Matters Identified During the Audit

- AU-C 265 Letter: including material weaknesses and/or significant deficiencies
- Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

For the fiscal year ending June 30, 2023, the City will not require a Single Audit under the Single Audit Act. The City does not anticipate needing a Single Audit during the term of the contract. If the City requires a Single Audit during the term of the contract, however, then the City would expect to be able to negotiate an addendum to the professional audit services contract to include a Single Audit.

Supplemental Reports / Studies

Reports on other audits or agreed-upon procedures may be agreed to in writing as stated in a supplemental services agreement. Prior to beginning work, the scope and associated costs will be approved by the City.

Standards to be Followed

To meet the requirements of this RFP, these audits are to be performed in accordance with all applicable professional standards including, but not limited to, applicable standards set forth for financial audits by the Governmental Accounting Standards Board (GASB), *Government Auditing Standards* (GAS), as promulgated by the Government Accountability Office (GAO) (if applicable), and requirements described in the U.S. Office of Management and Budget (OMB) Uniform Guidance and Compliance Supplement (if applicable).

In addition, all aspects of the engagement will be performed in accordance with the highest professional standards and comply with all applicable federal, state and local laws.

Special Considerations

The firm receiving the contract for audit services will procure and maintain, for the duration of the contract, insurance as required in the standard professional services contract (see Attachment B). The firm must provide a Certificate of Insurance.

Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of seven (7) years following completion of the audit, unless the firm is notified in writing by the City of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:

- Parties designated by the federal or state governments or by the City of Lowell as part of an audit quality review process Oregon Secretary of State, Audits Division

In addition, the firm will respond to the inquiries of successor auditors and allow successor auditors to review working papers related to matters of accounting significance and internal control.

Assistance to be provided by the City of Lowell

1. Staff will prepare the final closing of the books. The City will provide the auditors with a trial balance by fund and all accounting detail necessary to perform the audit.
2. Staff will prepare all workpapers requested by the Auditor prior to the start of interim and/or final fieldwork.
3. Staff will generate the necessary confirmation letters based on templates provided by the auditors.
4. Staff will prepare the draft financial statements and all related schedules and statements deliverable to the auditor prior to the beginning of audit fieldwork. City staff will also incorporate any agreed upon edits to the draft to arrive at the final statements.
5. Staff will be available during the audit to assist in providing information, documentation and explanations as needed as well as access to the financial system to view records and print reports. All requests will first be directed to the City's contract accountant.
6. The City will provide the auditor with reasonable workspace including access to the internet and a photocopier.
7. The City Administrator will provide the auditor with a signed Representation Letter at the conclusion of the audit.

3. Proposal Requirements

Proposal Requirements

The proposal should address, at a minimum, the information requested in the "Minimum Content of Responses" section. Limit responses to 10 pages, excluding the title page, letter of transmittal, and required attachments.

Minimum Content of Responses

1. Title Page: A title page showing the firm's name, the date of proposal, point of contacts, business address, telephone numbers, and email addresses.
2. Letter of Transmittal: A signed letter of transmittal briefly stating that the firm submitting the proposal is properly licensed to perform such audits in the State of Oregon, agrees to perform all of the work outlined in the RFP within the established time periods, is independent of the City of Lowell, and understands that the firm's proposal is a firm and irrevocable offer through the June 30, 2023 audit period.
3. The letter must also contain a certification that the person signing the proposal is entitled to represent the audit firm, empowered to submit the bid, and authorized to sign a contract on behalf of the audit firm.

4. Firm Qualifications and Experience: Provide a brief overview of the firm's experience performing municipal audits. Include the results of the audit firm's most recent external quality review, any findings discovered as part of that review and actions taken to correct those findings. The audit firm must also disclose information on the circumstances and status of any disciplinary action taken or pending against the audit firm during the past three (3) years with state regulatory bodies or professional organizations, as well as any pending or settled litigation within the past three (3) years.
5. Experience and Qualifications of Key Personnel: Identify all key personnel who will be assigned to work on this project including names, CPA license numbers, and Oregon Municipal Audit Roster numbers. Include a summary of their background and experience in auditing similar organizations as well as their roles and assigned responsibilities under the proposal.
6. Audit Approach and Schedule: Describe the firm's audit approach and proposed schedule.
7. References: Provide contact information for three (3) of the firm's current municipal auditing clients in Oregon. Contact information should include the name of the public agency, name and title of contact person, telephone number, and email address.
8. Proposed Fees for Service: Provide expected hours required for the fiscal year ending June 30, 2023 and the not to exceed ("NTE") price on attachment A.
9. Describe the firm's policy on other charges including special requests and special reports or broadening the scope of the engagement and list the audit firm's billing rates for all other applicable professional services.
10. Differentiators. Describe what makes your firm different from other firms providing the same service and describe how that will translate to the level of services received.

Attachments

Attachment A: Fee Proposal

In accordance with the Request for Proposals for Professional Auditing Services, the firm referenced below submits the following hourly fee quotation and hours proposed for all positions to be assigned to the audit:

Fee for Fiscal Year End June 30, 2023:

<i>Key Personnel</i>	<i>Audit Hours</i>	<i>Hourly Rate</i>	<i>Total</i>
Engagement Partner			
Engagement Manager			
Engagement Senior			
Engagement Staff			
Clerical/Support Staff			
Other			

In accordance with the Request for Proposals for Professional Auditing Services the firm referenced below submits the following cost proposal for the term of the contract:

Fee proposal for Fiscal Years Ending June 30:

	<i>2023</i>	<i>2024</i>	<i>2025</i>	<i>2026</i>	<i>2027</i>
Financial Statement Audit					
Cost of Supplies and Materials					
Additional Fees (if applicable*)					
Total					

*Technical assistance, as needed, is expected from the audit firm throughout the fiscal year that may include inquiries regarding accounting, reporting and internal control issues. If fees related to this technical assistance are not included in the firm's financial statement audit fee, please include them here.

Attachment A: Fee Proposal (continued)

I hereby certify that the undersigned is authorized to represent the firm stated below, and empowered to submit this bid, and if selected, authorized to sign a contract for the services identified in the RFP.

Firm Name:	
Signature:	
Printed Name:	
Title:	
Date:	
Email Address:	

Attachment B: Personal Service Audit Contract

PERSONAL SERVICES CONTRACT

This contract is between City of Lowell, a political subdivision of the State of Oregon, hereinafter called "City", and Contractor hereinafter called "Contractor". The parties agree as follows:

1. Contractor's information:

NAME (tax filing):

ADDRESS:

EMAIL ADDRESS:

CITIZENSHIP, if applicable:

Non-resident alien Yes No

BUSINESS DESIGNATION (check one):

- | | | |
|--|--|--|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Governmental/Non-Profit | <input type="checkbox"/> Sole Proprietorship |
| <input type="checkbox"/> General Partnership | <input type="checkbox"/> Limited Liability Partnership | |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Limited Liability Company | |

Federal Tax ID#: _____

SSN#: _____

(Contractor must provide Contractor's Social Security Number unless it provides a federal TID number).

2. Description of Contractor's Services, Delivery Schedule and Compensation

- Exhibit A - Scope of Work

3. Compensation by City

a. Payment for all work performed under this contract will be made as set forth below from available and authorized City funds and will not exceed the maximum sum of Payment for all work performed under this contract will not exceed the maximum sum of: **See Exhibit A**. Travel and other expenses of the Contractor will not be reimbursed by City unless specifically provided herein as a supplementary condition.

b. Interim payments will be made to Contractor following City's review and approval of billings submitted by Contractor. Contractor will also submit copies of other billings for work performed under the contract when such bills are to be paid by other parties. These other billings are not subject to the maximum compensation amount of this contract.

c. Contractor will not submit billings for, and City will not pay, any amount in excess of the maximum compensation amount of this contract, including any travel and other expense when noted below. If the maximum compensation amount is increased by amendment of this contract, the amendment must be fully effective before Contractor performs work subject to the amendment. Contractor will notify City's supervising representative in writing 30 calendar days before this contract expires of the upcoming expiration of the contract. No payment will be made for any services performed before the beginning date or after the expiration date of this contract. This contract will not be amended after the expiration date.

d. Contractor will submit billings for work performed on a [REDACTED] basis. The billings will describe all work performed with particularity, by whom and on the date it was performed, the number of hours spent performing such work, and will itemize and explain all expenses for which reimbursement is claimed. Billings will be sent to the supervising representative.

4. Effective Date and Duration

This Contract will become effective on duration from [REDACTED], 20__ or the date this Contract is fully executed and approved as required by applicable law. Unless earlier terminated or extended, this contract will expire on [REDACTED], 20__, or when Contractor's completed performance has been accepted by City, whichever event occurs first. However, such expiration will not extinguish or prejudice City's right to enforce this contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor's performance that has not been cured.

5. Contract Documents

This contract between the parties consists of this Personal Services Contract, Scope of Work (Exhibit A), General Conditions (Exhibit B), Compliance with Applicable Laws (Exhibit C), and the following attached documents, if checked, which contain all the terms and conditions of the contract and are incorporated by this reference:

- Exhibit D Supplementary Conditions
- Exhibit E Required Federal Terms and Conditions

6. Amendments

The terms of this contract will not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties.

[THIS SECTION LEFT INTENTIONALLY BLANK. SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, THE PARTIES OR THEIR DULY AUTHORIZED REPRESENTATIVES HAVE SIGNED THIS CONTRACT:

Contractor	Date	City of Lowell City Administrator	Date
Title:			

CERTIFICATIONS/REPRESENTATIONS: Contractor, under penalty of perjury, certifies that (a) the number shown on this form is its correct taxpayer ID (or is waiting for the number to be issued to it and Contractor is not subject to backup withholding because (i) it is exempt from backup withholding or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Contractor further represents and warrants to City that (a) it has the power and authority to enter into and perform the work, (b) the Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms, (c) the work under the Contract will be performed in accordance with the highest professional standards, and (d) Contractor is qualified, professionally competent and duly licensed to perform the work. Contractor also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, and it is a corporation authorized to act on behalf of the entity designated above and authorized to do business in Oregon or is an independent contractor as defined in the contract documents, and has checked three or more of the following criteria:

<input type="checkbox"/>	I carry out the labor or services at a location separate from my residence or in a specific portion of my residence, set aside as the location of the business.
<input type="checkbox"/>	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.
<input type="checkbox"/>	I make a significant investment in the business, through means such as: <ul style="list-style-type: none"> • Purchasing tools or equipment necessary to provide the services; • Paying for the premises or facilities where the services are provided; or • Paying for licenses, certificates or specialized training required to provide the services.
<input type="checkbox"/>	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.

<input type="checkbox"/>	I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.
--------------------------	--

Contractor Date

Title:

Exhibit A
SCOPE OF WORK

[TO BE FILLED IN]

Exhibit B
GENERAL CONDITIONS

1. Independent Contractor; Responsibility for Taxes and Withholding; Retirement System Status:

Contractor will perform the work required by this contract as an independent contractor. Although the City reserves the right (i) to determine (and modify) the delivery schedule for the work to be performed and (ii) to evaluate the quality of the completed performance, the City cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.

The Contractor represents and warrants that Contractor (i) is not an employee of City of Lowell, Oregon, (ii) is not currently employed by the Federal Government, and (iii) meets the specific independent contractor standards of ORS 670.600, as certified on the foregoing Certification Statement for Corporation or Independent Contractor. Contractor is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.

Contractor will be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this contract and, unless Contractor is subject to backup withholding, City *will not* withhold from such compensation or payments any amounts(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this contract, except as a self-employed individual.

2. Subcontracts and Assignment

Contractor will not enter into any subcontracts for any of the Work required by this Contract or assign or transfer any of its interest in this Contract without City's prior written consent. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of City. City's consent to any subcontract will not relieve Contractor of any of its duties or obligations under this Contract.

3. Successors and Assigns

Neither party will subcontract, assign or transfer its interest in this Contract without the express written consent of the other party, and such consent will not be unreasonably withheld. In addition to any other provisions, Contractor will include in any permitted subcontract under this Contract a requirement that the subcontractor be bound to the same provisions herein as if the subcontractor were the Contractor. The provisions of this Contract will be binding upon and will inure to the benefit of the parties hereto, and their respective successors and assigns. Consent of City given to a subcontractor does not relieve the Contractor of any obligations and responsibilities under this Contract, including Contractor's responsibility for any goods and services to be provided by any subcontractor.

4. No Third-Party Beneficiaries

City and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives, is intended to give, or will be construed to give or provide, any benefit or right, 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.

5. Funds Available and Authorized

City has sufficient funds currently available and authorized for expenditure to finance the costs of this contract within the City's fiscal year budget.

6. Termination

- a. Mutual Consent. This contract may be terminated at any time by mutual consent of both parties.
 - b. Parties' Convenience. This contract may be terminated at any time by either Party upon **180 days' notice** in writing and delivered by certified mail or in person.
 - c. For Cause. City may terminate or modify this contract, in whole or in part, effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:
 - i. If City funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
 - ii. 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; or
 - iii. If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this contract is for any reason denied, revoked, suspended, or not renewed.
 - d. For Default or Breach.
 - i. Either City or Contractor may terminate this contract in the event of a breach of the contract by the other. Prior to such termination the party seeking termination will give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, or within such other period as the party giving the notice may authorize or require, then the contract may be terminated at any time thereafter by a written notice of termination by the party giving notice.
 - ii. Time is of the essence for Contractor's performance of each and every obligation and duty under this contract. City, by written notice to Contractor of default or breach, may at any time terminate the whole or any part of this contract if Contractor fails to provide services called for by this contract within the time specified herein or in any extension thereof.
 - iii. The rights and remedies of City provided in this subsection d are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.
-

- e. **Obligation/Liability of Parties.** Termination or modification of this contract pursuant to subsections a, b or c above will be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to subsections a, b, c or d of this section 6 Contractor will immediately cease all activities under this contract, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Contractor will deliver to City all contract documents, information, works-in-progress and other property that are or would be deliverables had the contract been completed. City will pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract.

7. Records Maintenance; Access; Ownership of Work Product; License

- a. **Records Maintenance; Access.** Contractor will maintain records pertinent to this contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that City and its duly authorized representatives will have access to such fiscal records and to all other books, documents, electronic files, papers, plans and writings of Contractor that are pertinent to this contract for the purpose of performing examinations and audits, and making excerpts and transcripts. Contractor further acknowledges records generated as a result of this Contract may be subject to disclosure pursuant to the Oregon Public Records Act.
- b. **Ownership of Work Product; License.** All work products of the Contractor that result from this contract (the "work products") are the exclusive property of the City. In addition, if any of the work products contain intellectual property of the Contractor that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Contractor hereby grants City a perpetual, royalty-free, fully paid-up, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part, and to authorize others to do so, all such work products, including but not limited to any information, designs, plans or works provided or delivered to the City or produced by the Contractor under this contract.

8. Compliance with Applicable Law

Contractor will comply with all federal, state and local laws and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279B.220, 279B.230, and 279B.235, and as well as other statutes as set forth in the attached Compliance With Applicable Law, which is by this reference made a part hereof. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659A.142, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal, state and local civil rights and rehabilitation statutes, rules and regulations.

9. Foreign Contractor

If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor will 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. The Contractor will demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this contract.

10. Governing Law; Jurisdiction; Venue

This contract will be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in the State of Oregon.

The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in the audit of municipal finances and shall include a written record of the arbitration hearing. The costs of the arbitration, including the cost of the arbitrator and prevailing party's legal fees, shall be borne by the losing party. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed or enforced in a court of competent jurisdiction.

11. Insurance

a. Insurance. Contractor will at its own expense provide the following insurance:

- i. The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide workers' compensation coverage for their workers that comply with ORS 656.126. Employers' Liability Insurance with coverage limits of not less than \$500,000 each accident shall be included.
- ii. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000. Annual aggregate limit shall not be less than \$1,000,000.
- iii. Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract and

Product and Completed Operations. Such insurance shall be primary and non-contributory. Coverage shall be a minimum of \$2,000,000 per occurrence, and \$2,000,000 aggregate.

- iv. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than **N/A** for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
 - v. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the Commercial General Liability Insurance policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance.
- b. Notice of cancellation or change. There will 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.

12. Force Majeure

Neither City nor Contractor will be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond, respectively, City's or Contractor's reasonable control. Contractor will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations under this contract.

13. 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 will not be affected, and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

14. Survival

The terms, conditions, representations and all warranties contained in this Contract will survive the termination or expiration of this Contract.

15. Waiver

The failure of either party to enforce any provision of this contract will not constitute a waiver by either party of that or any other provision.

16. Execution and Counterparts

This contract may be exercised in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

17. Prior Approval Required

Approval by the City of Lowell City Council or the City Administrator is required before any work may begin under this contract.

18. Notice

Notices required by this contract must be given in writing by personal delivery or mail, at the addresses given by the parties on the first page of this contract, unless some other means or method of notice is required by law. Each party will notify the other of any change of address.

19. Confidentiality

Contractor acknowledges and agrees it is responsible for ensuring compliance with all applicable confidentiality laws, including but not limited to the Health Insurance Portability Accountability Act (HIPAA) and Family Educational Rights and Privacy Act (FERPA).

20. Merger Clause

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

Exhibit C
COMPLIANCE WITH APPLICABLE LAW
(Public Non-Improvement Contracts)

ORS 279B.220 Conditions of public contracts concerning payment of laborers and materialmen, contributions to Industrial Accident Fund, liens and withholding taxes. Every public contract will contain a condition that the Contractor will: Make payments promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract. Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract. Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of labor or material furnished. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

279B.225 Condition concerning salvaging, recycling, composting or mulching yard waste material. Every public contract for lawn and landscape maintenance will contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.

ORS 279B.230 Condition concerning payment for medical care and providing workers' compensation. (1) Every public contract will also contain a condition that the contractor will promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor 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.

(2) Every public contract also will contain a clause or condition that all employers working under the contract are subject employers that will comply with ORS 656.017 or are exempt under ORS 656.126.

ORS 279B.235 Condition concerning hours of labor. (1) Except as provided in subsections (3) to (6) of this section, every public contract subject to this chapter must contain a condition that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee will be paid at least time and a half pay: (a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (b) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020. (2) An employer must give notice in writing to employees who work on a public contract, 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. (3) In the case of contracts for personal services as described in ORS 279A.055, the contract will contain a provision that the employee will be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime. (4) In the

case of a contract for services at a county fair or for other events authorized by a county fair board, the contract must contain a provision that employees must be paid at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. An employer will give notice in writing to employees who work on such a contract, 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 employees may be required to work. (5)(a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires that persons employed under the contracts will receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater. (b)A contractor shall notify in writing employees who work on a public contract for services, either at the time of hire or before work begins on the public 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 contractor may require the employees to work.

ORS Chapter 244. Contractor will not provide or offer to provide any appreciable pecuniary or material benefit to any officer, employee or agent of the City in connection with this contract in violation of ORS Chapter 244 or City's personnel rules.

ORS 670.600 provides in part: "As used in various provisions of ORS Chapters 316, 448, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration will be considered to perform the labor or services as an 'independent contractor' if the standards of this section are met." ORS 670.600 also provides standards for satisfying the designation of an independent contractor:

1. Free from direction and control over means and manner of providing labor or service.
2. Responsible for obtaining all necessary business registrations and professional occupation licenses.
3. Furnishes its own tools and equipment for the work.
4. Has the authority to hire and fire employees to perform the work.
5. Registered under ORS Chapter 701.
6. Filed federal and state income tax returns in the name of its business or a business Schedule "C" as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.
7. Represents to the public that the labor or services are to be provided by an independently established business.
8. The labor or services are primarily carried out at a location that is separate from my residence, or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
9. The business has purchased business cards or commercial advertising.
10. A telephone listing and service is used for the business that is separate from the personal residence listing and service.
11. Labor or services are performed only pursuant to written contracts. Labor or services are performed for two or more different persons within a period of one year. Assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability relating to the labor or services to be provided.