



Request for Proposal (RFP) Public Art Master Plan Consultant Services

Proposals Due: Monday, March 5, 2018 at 4:00 pm (PST)

www.sherwoodoregon.gov/bids



City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140
503.625.4261



REQUEST FOR PROPOSALS (RFP) CONSULTANT SERVICES – PUBLIC ART MASTER PLAN

The City of Sherwood, Oregon is seeking the services of a qualified firm or individual(s) to develop a Public Art Master Plan for the City of Sherwood, Oregon.

Proposals are due no later than 4:00 pm on Monday, March 5, 2018.

DESCRIPTION OF THE REQUEST FOR PROPOSALS

Project Purpose/Overview

The Sherwood Cultural Arts Commission and the City of Sherwood have received a local grant to help create a Public Art Master Plan. Having seen significant growth over the past decade, the community continues to expand its focus on arts and culture. The Cultural Arts Commission believes there is a great opportunity to incorporate public art in the community and to further engrain arts and culture in its identity.

The Sherwood Cultural Arts Commission plans to work with an experienced consultant to create a Public Art Master Plan. It is the hope that with a clear and focused plan, the Sherwood Public Art Master Plan will be a representation of the values, identity and spirit of the Sherwood community.

Scope of Work

The selected Proposer shall complete execution of the items listed below, and as described further throughout this RFP. This effort involves the creation of a Public Art Master Plan, the process and product of which is to include, but not be limited to the following:

- Produce a written Master Plan that is a detailed narrative and illustrative document that includes:
 - A vision statement and 10 year strategic plan for Public Art in Sherwood
 - Potential locations and opportunities for Public Art
 - Process for commissioning, selecting and acquiring artwork
 - Standards for donated artwork
 - Standards for administration, maintenance and de-acquisition of artwork
 - Identify best practices for funding sources in cities of comparable size
- Plan, develop, and lead efforts to engage community cultural stakeholders in input sessions to influence the creation of the Master Plan. The selected Proposer will develop surveys and other tools to gather data; tools and responses will be provided as an appendix to the final document. City staff will assist in meeting coordination, invitations, and marketing of community input sessions.
- Perform an assessment of the City of Sherwood's assets and opportunities for Public Art, including potential locations. This is to include reviewing and becoming familiar with existing polices, documents and local codes.

Content of the Proposal

Proposals shall adhere to the following criteria and limitations:

Proposers shall submit a written proposal that presents their qualifications and understanding of the work to be performed. Submittals shall be limited to a total of 20 pages (2 sided pages, excluding cover letter, front and back cover, and attachments). Proposals shall provide in detail all the information the Proposer considers pertinent to its qualifications for this project as requested in this RFP.

- Proposers shall submit one electronic version (PDF file) on a thumb drive, as well as 3 paper copies of the written proposal. No emailed submission will be accepted.
- Each Proposer shall include in its proposal the following:
 - Cover Letter. On company letterhead, signed by a person with the corporate authority to enter into contracts in the amount of the cost proposal.
 - Business Information. Provide information about the Proposer's firm, areas of expertise, length of time in business, and any other information that would be helpful in characterizing the Proposer's experience.
 - Project Team. Provide professional information about the consulting team. Identify a proposed project manager responsible for day-to-day tasks and their experience with projects of a similar nature and scope.
 - Project Experience. Discuss three examples of projects reflective of the subject of this RFP that represent the project team's experience, with at least one project of similar scale and complexity. Attach samples of these projects to be submitted with the proposal.
 - Public Engagement Experience. Discuss experience with projects that required significant public engagement. Identify the type of project, the specific public engagement elements and how the information gathered was used in a final report.
 - Project Approach. Outline the specific approach to a project of this nature, and the overall understanding of what, why and how a Public Art Master Plan can benefit a small city like Sherwood.
 - Schedule. Provide a proposed schedule for the project, including a timeline of elements and final product delivery.
 - References. Provide references from the last three projects completed, regardless of size and scope.
 - Price Proposal. Provide a proposal of fees including specific breakdown of costs for each individual element, service and task. Include hourly billing rates for all team members. Total project cost cannot exceed \$10,000.
 - Other Relevant Information.

Evaluation

The City will set up a panel to review the submitted Proposals. The panel will be comprised of City staff, and some members of the Cultural Arts Commission. The panel will rank the qualified proposers based on the following criteria:

- Project Understanding and Approach – 30%
- Project Experience – 20%
- Public Engagement Experience and Proposal – 20%
- Price Proposal – 30%

Interview

The evaluation panel may elect to conduct interviews of some or all proposers, at its sole discretion.

Selection

The City’s project supervisor will negotiate a contract with the top ranked proposer. If the City and proposer cannot reach terms on a contract, the City reserves the right to negotiate with the next ranked proposer, and so on.

Schedule

The following is the anticipated timeline for receiving and evaluating proposals and awarding a contract to the most qualified proposer. This schedule is subject to change.

Advertise Request for Proposals	Monday, February 5, 2018, 12:00 p.m.
RFP Question Submission Deadline	Friday, February, 23, 2018, 12:00 p.m.
Addenda Issuance Deadline	Wednesday, February, 28, 2018, 12:00 p.m.
Proposals Due	Monday, March 5, 2018, 4:00 p.m.
Opening of Proposals	Monday, March 5, 2018, 4:30 p.m. Sherwood Center of the Arts 22689 SW Pine St., Sherwood, OR 97140
Potential Interview Date of Proposers	Wednesday, March 14, 2018, 5 p.m.
Evaluation Proposals Complete	Friday, March 16, 2018
Notice of Intent to Award	Monday, March 19, 2018
Award Protest Deadline	Monday, March 26, 2018, 12:00 p.m.
Notice of Award	Monday, March 26, 2018, 4:00 p.m.

City’s Project Supervisor

The City’s project supervisor will be Maggie Chapin, manager of the Sherwood Center for the Arts. The City’s project supervisor will work closely with the selected proposer and respond with the provision of needed information and feedback as well as assist in the coordination of the delivery of any product as necessary. Contact information for Maggie Chapin is as follows: phone (503) 625-4261; email chapinm@sherwoodoregon.gov

Proposal Submittal

The deadline and format for submittal of proposals are specified above. Proposals will be accepted via personal delivery or U.S. mail as follows:

- Address to: City of Sherwood
ATTN: Maggie Chapin, Center for the Arts Manager
22560 SW Pine St, Sherwood, Oregon 97140
- Deadline: 4:00 p.m., Monday, March 5, 2018
- Number of copies: One electronic version on a thumb drive, and 5 printed copies
- Format: Secure all copies in an opaque sealed envelope, stating the name and address of the Proposer, and labeled:

Request for Proposals - Public Art Master Plan

The entire submittal package must be received by or before the time and date indicated above. Delays due to mail and/or delivery handling, including but not limited to delays within the City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the proposal to the correct location by the proposal due date. Late proposals will be returned unopened and without review. Electronically mailed or faxed proposals will not be accepted. Time and date deadlines for submittal will not be waived; however, the City reserves the right to extend the submittal deadline by written addendum.

Cancellation

The City reserves the right to cancel this RFP or reject any or all proposals in accordance with ORS 279B.100.

Rejection of Proposals

The City reserves the right to reject any or all irregularities in proposals submitted in response to this RFP. Furthermore, the City reserves the right to reject any or all proposals, or portions thereof, submitted in response to this RFP. Proposals may be rejected for reasons including, but not limited to:

1. Failure of the Proposer to adhere to one or more of the provisions established in the RFP.
2. Failure of the Proposer to submit a proposal in the format specified herein.
3. Failure of the Proposer to submit a proposal within the time requirements established herein.
4. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the proposal process.
5. Failure to provide information that is specifically requested in this RFP.

The City may reject any proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all proposals upon a finding by the City that it is in the public interest to do so.

Waiver

The City reserves the right to waive minor informalities or discrepancies contained in any proposal.

Disputes

In case of any doubt or differences of opinion as to the items or services to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties.

Contract

A copy of the City of Sherwood's Standard Professional Services Contract is attached.

Confidentiality and Public Records

All information submitted by a Proposer shall become and remain the property of the City and is considered public information and subject to disclosure pursuant to the Oregon Public Records Law, except such portions of the proposal which are exempt from disclosure consistent with Oregon law. If a proposal contains any information that the Proposer believes is exempt from disclosure under the various grounds specified in the Oregon Public Records Law, the Proposer must clearly designate each such portion of its proposal as exempt at the time of proposal submission, along with a justification and citation to the legal authority relied upon. Identifying the proposal, in whole, as exempt from disclosure is not acceptable. Failure to identify specific portions of the proposal as exempt shall be deemed a waiver of any future claim of that information as exempt.

The City will make available to any person requesting information, through the City processes for disclosure of public records, any and all information submitted as a result of this RFP not exempted from disclosure, without obtaining permission from any Proposer to do so. City may also, in its sole discretion, elect to publish all such information at any time, regardless of whether or not a public records request has been received. However, if a public records request is made for material marked by the Proposer as exempt, the City will attempt to notify the impacted Proposer prior to any release of the material. Application of the Oregon Public Records Law by the City will determine whether any information is actually exempt from disclosure. The City accepts no liability for the release of any information submitted.

Proposer Certifications and Acknowledgements

By the act of submitting a proposal in response to this RFP, the Proposer certifies that:

Proposer has carefully examined all RFP documents, all addenda (if applicable), and all other attachments, fully understands the RFP intent, is able to perform all tasks as described, and its Proposal is made in accordance therewith. Except as otherwise noted as part of its Proposal, Proposer certifies as follows:

1. Proposer is familiar with the local conditions under which the work will be performed.
2. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the Proposal.
3. Proposer will fully meet all of the City minimum insurance requirements (Appendix A).
4. To the best of Proposer's knowledge and belief, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that, no elected official, employee, or person whose salary is payable in whole or part by the City has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof, other than as fully described in the Proposal.

5. Proposer has examined all parts (including addenda) of the RFP, including all requirements and contract terms and conditions thereof, and if its Proposal is accepted, Proposer shall accept contract documents conforming thereto.
6. Proposer, if an individual, is of lawful age, is the only one interested in this Proposal, and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
7. Proposer has quality experience providing the types of services and duties as described within the Scope of Services of this RFP.
8. Proposer shall also certify whether Proposer is an Oregon Proposer or a non-resident Proposer.

The Proposer must acknowledge in its proposal the following:

1. The Proposer agrees with all stipulations and requirements, as presented in this RFP.
2. The Proposer acknowledges that, if selected as the successful proposer, such selection is contingent upon successful negotiation of a contract with the City of Sherwood.

Nondiscrimination

By the act of submitting a Proposal in response to this RFP, Proposer certifies, under penalty of perjury, that: Proposer has not discriminated against minorities, women, or emerging small business enterprises in obtaining any required subcontracts.

Competition

Prospective Proposers are encouraged to comment, in writing, on any specification or requirement within this RFP that the Proposer believes will inordinately limit competition. City will consider all Proposals equally and shall not favor any particular Proposer over another in analyzing the Proposals to encourage fair competition.

RFP Questions

Interested Proposers shall direct all questions regarding RFP documents by email to the City's project supervisor, Maggie Chapin at chapinm@sherwoodoregon.gov.

All questions shall include " Public Art Master Plan – RFP Questions" in the subject line and must be submitted by 12:00 p.m., Pacific Daylight Time, on Friday, February 23, 2018. Questions and answers will be provided to all Proposers and public on the bid webpage. Questions submitted after the deadline will not be addressed.

For the sake of fairness, Proposers are not to contact any City staff or official, other than the project supervisor, concerning this RFP. Contact with any other City staff or officials concerning this RFP will be grounds for disqualification.

Proposers are hereby notified that verbal communication may not be relied upon as official communication concerning the RFP. Only answers to those questions responded to by the City's project supervisor via email or posted on the City's website may be relied upon. Proposers should also check the City's website frequently at www.sherwoodoregon.gov to look for any addenda to the RFP.

RFP Protests and Change Requests

To the extent required by ORS 279B.405, a prospective Proposer may protest anything contained in the RFP documents and request a corresponding change to any provision, specification, or contract term contained in the RFP documents by submitting a written request to:

City of Sherwood
Attn: Maggie Chapin
Center for the Arts Manager
22560 SW Pine Street
Sherwood, OR 97140
ChapinM@SherwoodOregon.gov

All change requests shall include "Consultant Services – Public Art Master Plan – RFP Protest" in the subject line or written on the front of the envelope and be submitted, in writing, by 12:00 p.m., Pacific Time, on February 23, 2018. Any such protest must include the information required by ORS 279B.405(4) and a statement of the desired change(s) to the procurement process or solicitation document(s) that the prospective proposer believes will remedy the conditions upon which the protest is based. The City will not consider any solicitation protest submitted after the deadline or any protest which does not include the required information.

The City will review the protest and respond in writing in accordance with ORS 279B.405. If the City determines it is necessary in order to consider and respond to a protest, the City may extend closing. If the City upholds a protest, in whole or in part, the City may, in its sole discretion, either issue an addendum reflecting its disposition or cancel the solicitation. Before seeking judicial review, a Proposer must file a written protest with the City and exhaust all administrative remedies.

Award Protest

A proposer believing itself to have been adversely affected or aggrieved by the selection of the successful proposer may submit a protest to the City in accordance with OAR 137-047-0740. The protest must be in writing and submitted to the City's project supervisor.

Award protests shall include "Public Art Master Plan - Award Protest" in the subject line or written on the front of the envelope. The written protest must be received by the City no later than seven (7) calendar days after the date the Notice of Intent to Award letter was issued. A protest must specify the grounds for the protest, include evidence or supporting documentation, and specify the relief sought. The City shall not consider any written protest not received by the deadline or which does not contain the required information. The City will issue a written disposition of the protest in a timely manner in accordance with ORS 279B.410. If the City upholds the protest, in whole or in part, the City may, in its sole discretion, either issue an addendum reflecting its disposition or cancel the solicitation. Before seeking judicial review, a proposer must file a written protest with the City and exhaust all administrative remedies.

City Requests for Clarification, Additional Research and Revisions

The City reserves the right to obtain clarification of any portion of a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to timely respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal. The City need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of any Proposer. Information obtained may include, but shall not necessarily be limited to, current litigation and contracting references. All such information, if requested by the City, becomes part of the public record and may be disclosed accordingly.

The City reserves the right to request revisions of any Proposal after the date and time due and before award for the purpose of obtaining best and final offers.

RFP Addenda

The City reserves the right to make changes to the RFP by written addendum, which shall be issued by email to all those who have obtained the RFP documents by contacting the City, and will be made available for download at www.sherwoodoregon.gov under "Business & Development/Bids & RFPs".

All addenda shall have the same binding effect as though contained in the main body of the RFP documents.

No addenda will be issued later than February 28, 2018, except by an addendum, if necessary, postponing the date for receipt of proposals or canceling the RFP altogether.

Each Proposer is responsible for obtaining all addenda prior to submitting a proposal and shall acknowledge in the proposal receipt of each addendum as part of the proposal. Failure to acknowledge receipt of all addenda as part of the proposal may result in rejection of the proposal.

Modification or Withdrawal of Proposal by Proposer

Any Proposer may modify its Proposal at any time, in writing, prior to the scheduled closing time for receipt of proposals, provided communication of such is received by the City prior to the closing time. Any modification of a proposal must include a statement that the modification amends and supersedes the prior proposal. All such communication shall be so worded as not to reveal the contents of the original Proposal. Withdrawn Proposals may be resubmitted prior to the time and date the Proposals are due, provided that they are then fully in conformance with the RFP.

Duration of Proposal

Proposal prices, terms, and conditions shall be firm for a period of at least one-hundred eighty (180) days from February 5, 2018. Proposals shall not be subject to future price escalation or changes of terms during that period.

Proposal Costs

Proposers responding to this RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with responding to the RFP. Proposers invited to participate in interviews are responsible for scheduling and paying for their own travel arrangements. The City is not liable for any cost incurred by a Proposer in protesting any portion of the RFP documents or the City's selection decision.

Local and Federal Requirements

The City of Sherwood intends to select an organization in accordance with OAR 137-047-0255 and the City's municipal code. Selection of an organization under this process is not a guarantee of a contract

award, nor is the award of a contract for any portion of the work a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City of Sherwood. The selected organization shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this contract, including, without limitation, the provisions of: (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 and ORS 659.425; (iv) all applicable state and federal wage and hour laws; (v) all regulations and administrative rules established pursuant to the foregoing laws; and (vi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

Proposer is subject to the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires the provision of Workers Compensation coverage for all employees working under this contract. The City of Sherwood's programs, services, employment opportunities, and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, disability, or political affiliation.

**APPENDIX A
MINIMUM INSURANCE REQUIREMENTS**

Indemnity - Standard of Care

Contractor

1.1. Contractor acknowledges responsibility for liability arising out of the performance of this Contract and shall defend, indemnify, and hold harmless City and its officers, agents, volunteers, and employees against any and all liability, settlements, loss, damage, costs, and expenses arising from or in connection with any action, suit, demand, or claim resulting or allegedly resulting from, attributable in whole or in part to, or in any way connected with Contractor's and Contractor's officers', agents', volunteers', and employees' acts, omissions, activities, or services in the course of performing this Contract. Contractor's activities are deemed to include those of Contractor's subcontractors. This section will survive the termination or revocation of this Contract, regardless of cause.

11. Insurance

Contractor shall obtain at its expense, and maintain for the term of this contract, occurrence form commercial general liability and commercial automobile liability insurance, including coverage for all owned, hired, and non-owned automobiles, for the protection of Contractor, the City, its Councilors, officers, agents, volunteers, and employees. Such coverage shall be primary and non-contributory. Coverage shall include personal injury, bodily injury, including death, and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Contractor's operations, in an amount not less than \$2,000,000 combined single limit per occurrence and \$2,000,000 aggregate. Such insurance shall name the City as an additional insured. 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 complies with ORS 656.126. Employers' Liability Insurance with coverage limits of not less than \$1,000,000 each accident shall be included. All policies will provide for not less than thirty (30) calendar days' written notice to the City before they may be canceled. Prior to commencing work under this Contract, and thereafter upon request, Contractor shall furnish the City certificates of insurance and necessary endorsements evidencing the effective dates, amounts, and types of insurance required by this Contract.



[Insert Division]
[Insert Department]
 22560 SW Pine St.
 Sherwood, OR 97140
 503-925-2308

CONTRACT FOR PROFESSIONAL SERVICES

PROJECT NAME:

CONTRACT PARTIES: **City of Sherwood** and [hereafter called Consultant]
 [hereafter called City]

C.O.S. PROJECT MANAGER:

ACCOUNT #:	FUND #:	DEPT:	JOB #:
VENDOR #:	URA RES:	PHASE:	

SCOPE of WORK: Attached as Exhibit A **FEE SCHEDULE:** Attached as Exhibit B

SCHEDULE of WORK: effective date: _____ expiration date: _____

PAYMENT: City agrees to pay Consultant based on the Fee Schedule an amount not to exceed \$ _____ for the Scope of Work.

A performance bond in the amount of the maximum contract payment amount set forth immediately above, and a payment bond in the amount of 50% of the performance bond amount, are are not required for this Contract.

CONSULTANT DATA, REGISTRATION, and SIGNATURE

CONSULTANT FIRM:	LIC #:
ADDRESS:	
VOICE:	FAX:
CONTACT:	TITLE:

I, the undersigned, agree to perform the work outlined in this Contract in accordance with the terms and conditions listed on pages 2-6 and made part of this Contract, and in accordance with the exhibits attached and made part of this Contract. I certify, under penalty of perjury, that I/my business is not in violation of any Oregon tax laws; and certify that I am an independent contractor as defined in ORS 670.600.

CONSULTANT: _____
 signature date

CITY OF SHERWOOD APPROVALS (consult the City's Delegation of Contracting Authority policy for requirements)

PROJECT MANAGER: _____
 signature date

DEPARTMENT DIRECTOR: _____
 signature date

FINANCE DIRECTOR: _____
 signature date

CITY MANAGER: _____
 signature date

CITY ATTORNEY
Approved as to Form: _____
 signature date

STANDARD CONTRACT PROVISIONS

(These provisions not to be altered without approval of the City Attorney.)

1. Access to Records

The Consultant shall maintain, and the City of Sherwood ("City") and its duly authorized representatives shall have access during normal business hours to the books, documents, papers, and records of the Consultant 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 reasonable request. Payment for cost of copies is reimbursable by the City.

2. Audits

- (a)** The City, either directly or through a designated representative, at City's expense except as provided in subsection 2(b), may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract 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 Consultant were in excess of the amount to which the Consultant was entitled, then the Consultant shall repay the amount of the excess to the City. If the payments to the Consultant were in excess of the amount to which the Consultant was entitled by five percent (5%) or more, then Consultant shall additionally repay to the City the reasonable costs of the audit performed under subsection 2(a).
- (c)** If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies provided under section 5, **Early Termination of Contract** and section 7, **Remedies**.

3. Effective Date and Duration

The passage of the Contract expiration date, or early termination of this Contract, 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. Payments

City agrees to pay Consultant based on the fee schedule in Exhibit B, attached hereto and incorporated herein by reference, in a total sum not to exceed the amount indicated on the cover page of this Contract, for the scope of work identified in Exhibit A, attached hereto and incorporated herein by reference. Consultant shall submit detailed written invoices to City for work performed, referencing the work performed and the fee schedule in Exhibit B, at a frequency not to exceed one invoice per calendar month, and no later than sixty (60) calendar days after performance of the work referenced in the invoice. Within thirty (30) calendar days of receipt of each invoice, City shall submit payment to Consultant or shall notify Consultant in writing of any dispute with regard to such invoice.

5. Early Termination of Contract

- (a)** The City and the Consultant, by mutual written agreement, may terminate this Contract at any time.
- (b)** The City, by written notice to the Consultant, may terminate this Contract for any reason deemed appropriate in its sole discretion, such termination to be effective thirty (30) calendar days after the effective date of such notice or at such later date as specified in such notice.
- (c)** City may terminate this Contract by written notice to Consultant, such termination to be effective immediately upon the effective date of such notice or at such later date as specified in such notice, upon the occurrence of any of the following events:
 - (1) City fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient to pay for Consultant's work;
 - (2) Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or City is prohibited from paying for such work from the planned funding source;
 - (3) Consultant no longer holds any license or certificate that is required to perform the work, or any license or certificate required by statute, rule, regulation, or other law to be held by the Consultant to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed, or changed in such a way that Consultant no longer meets requirements for such license or certificate.
 - (4) City determines, in its sole discretion, that Consultant has violated section 25, **Information Technology**.
- (d)** Either the City or the Consultant may terminate this Contract in the event of a breach of the Contract 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) calendar days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

- (e) Upon receiving a written notice of termination of this Contract, Consultant shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice. Upon termination of this Contract, Consultant shall deliver to City all documents, information, works in progress, and other property that are or would be deliverables had the Contract been completed.

6. Payment on Early Termination

- (a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Contract** hereof, the City shall pay the Consultant for work performed in accordance with the Contract prior to the termination date.
- (b) In the event of termination under subsection 5(d), **Early Termination of Contract** hereof, by the Consultant due to a breach by the City, the City shall pay the Consultant as provided in subsection (a) of this section.
- (c) In the event of termination under subsection 5(d), **Early Termination of Contract** hereof, by the City due to a breach by the Consultant, the City shall pay the Consultant 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 Consultant's work product will become and remain property of the City.

7. Remedies

- (a) In the event of termination under subsection 5(d), **Early Termination of Contract**, hereof, by the City due to a breach by the Consultant, the City may complete the work itself, by contract with another consultant, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Consultant shall pay to the City the amount of the reasonable excess.
- (b) The remedies provided to the City under section 5, **Early Termination of Contract** and section 7, **Remedies** for a breach by the Consultant shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.
- (c) In the event of breach of this Contract by the City, the Consultant's remedy shall be limited to termination of the Contract and receipt of payment as provided in section 5(d), **Early Termination of Contract** and section 6(b), **Payment on Early Termination** hereof.

8. Subcontracts and Assignment

Consultant shall not subcontract, assign or transfer any of the work scheduled under this Contract, without the prior written consent of the City. Notwithstanding City approval of a sub-consultant, the Consultant shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Consultant hereunder. The Consultant agrees that if sub-consultants are employed in the performance of this Contract, the Consultant and its sub-consultants are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. Consultant further agrees that Consultant will be solely responsible for ensuring any sub-consultants fully comply with the terms of this Contract, and that Consultant will be solely liable for actions or omissions of sub-consultants under this Contract.

9. Compliance with Applicable Law

In connection with its activities under this Contract, Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws and regulations.

10. Indemnity - Standard of Care

If Consultant's services involve engineering or planning consulting, the standard of care applicable to Consultant's service will be the degree of skill and diligence normally employed by professional engineers or planning consultants performing the same or similar services at the time such services are performed. Consultant will re-perform any services not meeting this standard without additional compensation. Consultant acknowledges responsibility for liability arising out of the performance of this Contract and shall defend, indemnify, and hold harmless City and its officers, agents, volunteers, and employees against any and all liability, settlements, loss, damage, costs, and expenses arising from or in connection with any action, suit, demand, or claim resulting or allegedly resulting from, attributable in whole or in part to, or in any way connected with Consultant's and Consultant's officers', agents', volunteers', and employees' acts, omissions, activities, or services in the course of performing this Contract. Consultant's activities are deemed to include those of subcontractors. This section will survive the termination or revocation of this Contract, regardless of cause.

11. Insurance

Consultant shall obtain at its expense, and maintain for the term of this contract, occurrence form commercial general liability and commercial automobile liability insurance, including coverage for all owned, hired, and non-owned automobiles, for the protection of Consultant, the City, its Councilors, officers, agents, volunteers, and employees. Such coverage shall be primary and non-contributory. Coverage shall include personal injury, bodily injury, including death, and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Consultant's operations, in an amount not less than \$2,000,000 combined single limit per

occurrence and \$2,000,000 aggregate. Such insurance shall name the City as an additional insured. Consultant, 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 complies with ORS 656.126. Employers' Liability Insurance with coverage limits of not less than \$1,000,000 each accident shall be included. Consultant shall obtain at its expense and maintain for the term of this contract, professional errors and omissions liability insurance for the protection of Consultant and its employees, insuring against bodily injury and property damage and arising out of or resulting from Consultant's errors, negligent acts, omissions, activities or services, in an amount not less than \$2,000,000 combined single limit per occurrence, with an annual aggregate limit not less than \$2,000,000. Such insurance shall be endorsed to include contractual liability. If Consultant obtains professional errors and omissions liability insurance on a claims made form, Consultant shall maintain three (3) years of tail coverage for the three (3) years after the accepted completion of the Contract by the City. All policies will provide for not less than thirty (30) calendar days' written notice to the City before they may be canceled. Prior to commencing work under this Contract, and thereafter upon request, Consultant shall furnish the City certificates of insurance and necessary endorsements evidencing the effective dates, amounts, and types of insurance required by this Contract. Additionally, if Consultant is subject to the professional errors and omissions liability insurance tail coverage requirement under this section, Consultant shall furnish the City, upon the accepted completion of the Contract by the City, a certificate of insurance and necessary endorsements evidencing the effective dates, amounts, and types of insurance meeting said requirement.

12. Ownership of Work Product

All work products of the Consultant, which result from this Contract, are the exclusive property of the City; provided, that Consultant is hereby granted an irrevocable, royalty free, worldwide, perpetual license to use, reproduce, copy, distribute and make derivatives of its work product, regardless of whether Consultant has resigned, this Contract has been terminated, Consultant's scope of services has been modified, or Consultant's services under this Contract have been completed.

13. Nondiscrimination

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

14. 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.

15. 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.

16. 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.

17. Errors

The Consultant 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.

18. Governing Law; Forum

The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon, without regard to conflicts of law principles. Any action or suits involving any question arising under this Contract must be brought in the appropriate court in Washington County, Oregon or, only if there is no Oregon state court jurisdiction, the United States District Court for the District of Oregon, and each party hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding. Any trial will be to the court without a jury.

19. Amendments

The City and the Consultant may amend this Contract at any time only by written amendment executed by the City and the Consultant.

20. License

Prior to beginning work under this Contract, the Consultant shall provide a professional registration number in the space provided on page one of this Contract, if required by the City.

21. Payment to Vendors and Sub-consultants

Consultant must promptly pay any persons supplying services, material, or equipment to Consultant in its performance of the work under this Contract. Consultant shall not take or fail to take any action in a manner that causes the City or any materials that the Consultant provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

22. Exhibits

Each document that is attached to this Contract as an Exhibit shall be labeled with an Exhibit letter and listed below. Provisions and covenants contained in Exhibits are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein. If any item in an Exhibit contradicts this Contract, this Contract shall take precedence over the conflicting item in the Exhibit.

List of Exhibits

Exhibit A – Scope of Work

Exhibit B – Fee Schedule

23. 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. Consultant, 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.

24. Mediation

- (a) Should any dispute arise between the parties to this Contract it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation.
- (b) The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) calendar days, or if the parties fail to agree on a mediator within ten (10) calendar days, a mediator shall be appointed by the presiding judge of the Washington County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

25. Information Technology

If Consultant access to City's information technology systems is necessary for the performance of this Contract:

- (a) Consultant agrees to sign and be bound by the terms of the City's then-current Contractor Security Policy, as it may be amended by City from time to time during the course of this Contract.
- (b) Consultant shall use the standard of care in its profession to safeguard any and all usernames, passwords, and other confidential information relating to accessing said systems; will limit access to such information to the smallest number of Consultant's employees and/or subcontractors as is reasonably practical; and will provide City with the names of all such employees and/or subcontractors who will be provided such information;
- (c) Consultant will not attempt to access any City information technology resources beyond those necessary for performance of this Contract; and
- (d) Consultant will be solely liable for any damages to City's information technology systems, data breaches, and any other losses or damages relating to Consultant's access to City's information technology systems.

26. Notice

Any notice required to be provided to City under this Contract shall be provided to the City Project Manager specified on the cover page of this Contract at the address for the City specified on the cover page of this Contract. Any notices required to be provided to Consultant under this Contract shall be provided to the Consultant Contact specified on the cover page of this Contract at the address for the Consultant specified on the cover page of this Contract. Notices shall be made by personal service, in which case they are effective on the date of service, or by certified mail, in which case they are effective on the date of delivery, or if delivery is refused, upon the date of delivery refusal. Either party may alter the person designated for receipt of notices under this Contract by written notice to the other party.

27.

Miscellaneous Terms

- (a) Consultant Identification. Consultant shall furnish to City Consultant's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Consultant's Social Security number.
- (b) Duty to Inform. Consultant shall give prompt written notice to City if, at any time during the performance of this Contract, Consultant becomes aware of actual or potential problems, faults, or defects in the project, any nonconformance with the Contract, or with any federal, state, or local law, rule, or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Consultant shall constitute neither agreement with nor acquiescence in Consultant's statement or claim, and shall not constitute a waiver of any of City's rights.
- (c) Independent Contractor. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Contract.
- (d) Time is of the Essence. Time is of the essence under this Contract.
- (e) Authority. The parties signing this Contract are authorized to sign and to bind their respective contracting parties to the terms of the Contract.
- (f) Conflict of Interest. Except with City's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Consultant's professional judgment with respect to this Contract, including, without limitation, concurrent employment on any project in direct competition with the subject of this Contract.
- (g) No Third-Party Beneficiaries. City and Consultant 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 shall be construed to give or provide, any benefit or right, whether directly or 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.

Statutory Provisions

- (a) As provided by ORS 279B.220, Consultant shall:
 - (1) Make payment promptly, as due, to all persons supplying to Consultant labor or material for the performance of the work provided for in this Contract.
 - (2) Pay all contributions or amounts due the Industrial Accident Fund from the Consultant or subcontractor incurred in the performance of this Contract.
 - (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
 - (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- (b) As provided by ORS 279B.230, Consultant shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums that Consultant agrees to pay for the services and all moneys and sums that Consultant collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services. It is a condition of this Contract that all employers working under this Contract are either subject employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- (c) As provided by ORS 279A.110, Consultant may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women, or an emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225. If Consultant violates this subsection, City may regard the violation as a breach of contract that permits the City to: (1) terminate this Contract; or (2) exercise any remedies for breach of contract that are reserved in this Contract.
- (d) As provided by ORS 279B.235, Consultant's employees shall 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. Consultant must give notice in writing to employees who work on this Contract, either at the time of hire or before commencement of work on this 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.

[SIGNATURES ON COVER PAGE TO CONTRACT]