



*Home of the Tualatin River National Wildlife Refuge*

## REQUEST FOR PROPOSAL (RFP)

### CITY OF SHERWOOD, OREGON REQUEST FOR PROPOSALS FOR PROFESSIONAL ENGINEERING SERVICES 99W PEDESTRIAN CROSSING PROJECT Project No. 334

**Proposals due Friday, June 18<sup>th</sup>, 2021 at 4:00 PM (local time)**



Owner:

City of Sherwood  
Engineering Department  
22560 SW Pine Street

Sherwood, OR 97140 [www.sherwoodoregon.gov/bids](http://www.sherwoodoregon.gov/bids)

## **TABLE OF CONTENTS**

- I.** GENERAL INFORMATION
- II.** GENERAL SCOPE OF WORK
- III.** RFP SUBMITTAL DATE AND SUBMITTAL REQUIREMENTS
- IV.** CITY'S RIGHT TO ACCEPT, REJECT AND AWARD PROPOSALS
- V.** PRE-PROPOSAL INTERPRETATIONS
- VI.** CONTRACT PAYMENT SCHEDULE
- VII.** INSURANCE COVERAGE
- VIII.** CONTRACT REQUIREMENTS
- IX.** PROPOSAL INSTRUCTIONS
- X.** EVALUATION CRITERIA
- XI.** APPENDIX - SAMPLE PROFESSIONAL SERVICES CONTRACT

**CITY OF SHERWOOD, OREGON**  
**REQUEST FOR PROPOSALS**  
**FOR PROFESSIONAL ENGINEERING SERVICES**  
**99W PEDESTRIAN CROSSING PROJECT**  
Project No. 334

**I. GENERAL INFORMATION**

In June of 2014, the City of Sherwood adopted its updated Transportation Master Plan (MP), which provides guidance on transportation growth for the next 20 year planning cycle. Part of the MP included fifty-one project listings for pedestrian connectivity and safety, and two Hwy 99W intersection transportation improvement projects. The MP boundary was set to the existing City Limits and Urban Growth Boundary.

In 2017, the Sherwood School District brought forth plans to construct a 2,400 student Senior High School on the west side of Highway 99W, west of Elwert Road and north of Kruger Road. At that time, the area was located outside the City limits and UGB boundary, but within the City's Urban Reserves area. As such, the MP could not and did not include any impacts from the future development of this area within the MP's 2035 planning year.

Because the majority of the High School student population is located east of Highway 99W, particularly along the Sunset Boulevard corridor, the City is concerned with how to ensure residents of all ages can safely cross 99W in this vicinity. Therefore, at the direction of City Council, the Sherwood Engineering Department has been tasked with development of a 30% design level plan for a pedestrian bridge over the Pacific Highway located near its intersection with SW Elwert Road and SW Sunset Boulevard.

Preliminary feasibility work has been conducted that identifies the project components including a 620 foot total length span(s) over both Highway 99W and Elwert Road with access ramps and stairs. The 30% design level plan will provide civil design of the project elements exclusive of the bridge elements, which will be provided in a separately issued RFP.

Subsequent to the feasibility study being completed, the City determined that utilizing prefabricated bridge structures would be the most cost effective and is in process to obtain designs for consideration from firms for public consideration and, ultimately, a City Council decision.

**II. GENERAL SCOPE OF WORK**

The City of Sherwood is seeking the services of a qualified professional civil engineering consulting firm to conduct the following:

1. Utilizing the existing project concept plan, prepare location options for review with ODOT, Washington County and city staff. The concept plan identified a total span of approximately 620 feet in two span segments. The City intends to use prefabricated bridge structures, with stairs and ramps providing access to the bridge structure. The civil work covered by this RFP will provide design for the project elements exclusive of the bridge structure itself. The City, through separate and concurrent process, intends to seek proposals from prefabricated bridge manufacturers to design the bridge spans.
2. Perform the necessary surveying services for the development of a design plan for the pedestrian bridge.

- a. Surveying limits/parameters will be scoped out at the time of contract negotiation.
3. Engineering design services to bring the project to a 30% design plan.
  - a. Provides a unique design solution of the civil elements of the pedestrian bridge crossing Hwy. 99W and Elwert Road, exclusive of the bridge elements, that will meet ODOT, Washington County and City of Sherwood approval.
  - b. Provides a unique design solution for access from existing public sidewalks to the overpass.
  - c. Provides a unique design solution that minimizes impacts to existing overhead utility lines.
  - d. Exact determination of what is to be included in the 30% design plan will be scoped out at the time of contract negotiation.
4. Perform necessary geotechnical testing for designing foundation support for overpass. Coordination with the bridge manufacturer will be required.
5. Prepare a 30% design plan estimate that includes construction costs, acquisition costs, permitting costs, design completion costs, construction management costs, construction inspection costs, utility relocation costs to be paid to others and any other miscellaneous costs that may be incurred during the design/construction of the project for a complete view of all costs that will be incurred for city project budgeting. The bridge element costs are not to be included with this estimate, as those costs will be provided by the bridge manufacturer.
6. Perform initial project management services towards obtaining the necessary jurisdictional agency permits for working within various jurisdictional right-of-ways, public and private easements, and vegetated corridors.
7. Provide initial technical assistance to the City in negotiating construction access easements and permanent access/utility easements across private properties, as needed.

### **III. RFP SUBMITTAL DATE AND SUBMITTAL REQUIREMENTS**

Submit one (1) original and four (4) copies as well as a PDF version saved on a thumb drive of the consultant's proposal in an envelope marked as follows:

**CITY OF SHERWOOD, OREGON  
REQUEST FOR PROPOSAL  
FOR PROFESSIONAL ENGINEERING SERVICES  
99W PEDESTRIAN CROSSING PROJECT  
Project No. 334**

Addressed to: City of Sherwood  
Engineering Department  
22560 SW Pine Street  
Sherwood, Oregon 97140  
Attention: Robert Galati, P.E., City Engineer

Project Manager is Craig Christensen, P.E., Civil Engineer

All proposals must be received no later than 4:00 p.m. (local time), June 18<sup>th</sup>, 2021. Proposals received after this date and time will not be accepted. Faxed or emailed proposal submittals are not acceptable.

Funding for the 30% level project design is allocated from the City's current budget for fiscal year (FY) 2020/2021 & 2021/2022. Award of the Professional Services Contract is anticipated to occur in June 2021. It is anticipated that a final executed contract will occur within 30-days after award.

Project design and preparation of 30% design documents and associated estimates must be completed prior to December 31<sup>st</sup>, 2021.

Consultant submitting proposals, which are evaluated as being highly responsive to the RFP, may be requested to make an oral presentation to the project's management team.

Proposals shall remain in effect for a period of sixty (60) days after the closing date. Each responding Consultant may withdraw their proposal in writing at any time before the closing date and time.

The proposal must state that the Consultant is an Equal Opportunity Employer and will comply with all Federal, State, and local laws, rules, and regulations.

Consultant selection shall be made on the basis of qualifications only, as outlined in 279C.110 and the procedures set forth in OAR 137-048-0130 and ORS 137-048-0210 (Informal Selection Procedure).

#### **IV. CITY'S RIGHT TO ACCEPT, REJECT, AND AWARD PROPOSALS**

The City reserves the right to:

- Accept or reject any or all proposal received as a result of this RFP.
- To negotiate contract terms with qualified Consultant.
- Take into consideration any or all information supplied by the Consultant in his/her proposal and the City's investigation into the experience and responsibility of the Consultant. In addition, the City may accept or reject proposals based on minor variations from the stated specifications, when such action is deemed to be in the City's best interest. Further, the City reserves the right to waive informalities in the submitted proposal.
- Award a contract to the respondent who the City determines to be the most responsive and responsible to this RFP. The successful Consultant shall commence work only after an agreement with the City is negotiated, a contract fully executed, and a Notice to Proceed has been issued.
- Cancel the RFP process entirely if deemed in the best interest of the City.

Incurring Costs: Neither the City of Sherwood, nor its agents are liable for costs incurred by the Consultant prior to execution of a contract and issuance of a Notice to Proceed.

#### **V. PRE-PROPOSAL INTERPRETATIONS**

The City is not responsible for any explanation, clarification, interpretation, or approval made or given in any manner, except by Addenda.

Addenda, if necessary, will be issued on the City's RFP project webpage

<https://www.sherwoodoregon.gov/bids> not less than three (3) days prior to the RFP closing date. It is the responsibility of the Proposer to check the webpage for any posted addenda, and ensure that the submitted proposal includes said addenda. Questions must be received not less than five (5) calendar days prior to the RFP closing date.

Questions shall be submitted to: Robert Galati, P.E., City Engineer  
Email: [galatib@sherwoodoregon.gov](mailto:galatib@sherwoodoregon.gov)

## **VI. CONTRACT PAYMENT SCHEDULE**

Payment for work will be made monthly upon receipt of Consultant's billing statement, consistent with City procedures and as established by the Finance Department. Each statement must include a summary of progress completed through the date of the billing statement and shall be submitted to the City's project manager. Monthly payments will be based on the costs incurred as summarized in the summary of progress report.

## **VII. INSURANCE COVERAGE**

The selected Consultant will be required to provide Errors and Omissions, Professional Liability Insurance in the amount of \$2,000,000 for this project as well as other insurance coverage including Workers Compensation.

The Consultant shall carry, at a minimum, comprehensive or commercial general liability, personal injury, and property damage insurance in the amount of \$2,000,000 aggregate total for all claims arising out of a single accident or occurrence. The Consultant shall include the City, its officers, agents, and employees as named insured on insurance policies issued for this project, or shall furnish an additional insured endorsement naming the same as an additional insured to the Consultant's existing public liability and property damage insurance.

The Consultant shall carry, at a minimum, automobile liability in the amount of \$2,000,000 aggregate total for all claims arising out of a single accident or occurrence.

In addition, the Consultant shall insure the work for 100 percent of the replacement value for the life of the contract against all loss or damage by fire, theft, vandalism, and malicious mischief.

Before the contract is executed, the Consultant shall furnish to the City a certificate of insurance for limits set out above, which is to be in force and applicable to the project.

## **VIII. CONTRACT REQUIREMENTS**

The successful Consultant will complete a City standard contract in the form of a *Professional Services Contract*, which shall incorporate a contract, a Scope of Work, a list of tasks, a work schedule, and certificate of insurance.

The City will issue the *Notice to Proceed* after execution of the Contract.

The Contract shall not be assigned in part or in total and the Consultant shall be solely responsible for the work of sub-contractors.

## **IX. PROPOSAL INSTRUCTIONS**

The Consultant must submit a definitive proposal for the end results that are set forth in this RFP. The proposal must describe the intended performance of the Consultant on the activities prescribed and the resources to perform the activities. The selected Consultant must have demonstrated experience in this type of project. The professional staff necessary to perform the requirements of this project must be available for timely response to questions and in preparing the project documents. The Consultant must have available a project manager with demonstrated skill in managing the preparation and delivery of required project documents and services.

The City expects the Consultant to maintain the same project manager and key team members through the duration of this project. Sub-consultants proposed by the Consultant shall be listed in the proposal.

Required Information: The proposal shall include, as a minimum, the following items:

1. The name of the person(s) authorized to represent the Consultant in negotiating and signing any contract that may result from this document.
2. A description of the organization, size, and structure of the Consultant's team.
3. A statement that the proposal includes all terms and conditions of the RFP.
4. A problem statement from the Consultant's perspective, of the objectives of the proposed Consultant work, the Consultant's proposed methodology, and a work plan for completing the work. If the Consultant chooses to modify the objectives section, those modifications shall be explained. The Consultant should clearly define the assumptions behind the proposal.
5. At least three (3) references of former clients with summaries or samples of previous work that demonstrates the Consultant's ability to provide the services necessary to fulfil the project objectives.
6. A list of the tasks, responsibilities, and qualifications of any proposed sub consultant(s).
7. A work schedule clearly showing and defining which tasks they will perform for their proposed Scope of Work. Details shall include Consultant and sub-consultant staff descriptions and associated tasks.

**X. EVALUATION CRITERIA**

Submitted proposals will be reviewed by at least three (3) City staff members (including the Community Development Director, the Public Works Director, and the City Engineer) and will be scored and ranked according to the following criteria:

1. Introductory Letter (5 points)
  2. Consultant Firm Capabilities (20 points)
  3. Consultant Project Team (10 points)
  4. Project Approach (60 points)
  5. Supporting Information (5 points)
- Total Possible Points Awarded (100 points)

**XII. APPENDIX – Sample Professional Services Contract**

**APPENDIX TO RFP**



**Community Development  
Engineering Department**  
22560 SW Pine St.  
Sherwood, OR 97140  
503-925-2309

**CONTRACT FOR PROFESSIONAL SERVICES**

**PROJECT NAME:** \_\_\_\_\_

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

**C.O.S. PROJECT MANAGER:** \_\_\_\_\_

<b>ACCOUNT #:</b> _____	<b>FUND #:</b> _____	<b>DEPT:</b> _____	<b>JOB #:</b> _____
<b>VENDOR #:</b> _____	<b>URA RES:</b> _____	<b>PHASE:</b> _____	

**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 \_\_\_\_\_



**APPENDIX TO RFP**

**CITY MANAGER:**

**CITY ATTORNEY**  
**Approved as to Form:**

\_\_\_\_\_ signature

\_\_\_\_\_ date

\_\_\_\_\_ 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;

## APPENDIX TO RFP

- (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 subconsultants 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

## APPENDIX TO RFP

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 nonowned 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.

## APPENDIX TO RFP

### 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.

## APPENDIX TO RFP

### 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

## **APPENDIX TO RFP**

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]***