



*Home of the Tualatin River National Wildlife Refuge*

# REQUEST FOR PROPOSAL (RFP)

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## ON CALL TRAFFIC ENGINEERING SERVICES

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### **Addendum #1**

Proposals due August 19 **22<sup>nd</sup>**, 2016 at 3:00 PM (PDT)

<http://www.sherwoodoregon.gov/bids>



Owner:

City of Sherwood  
22560 SW Pine Street  
Sherwood, OR 97140  
503-925-2309

## **TABLE OF CONTENTS**

- I. PURPOSE**
- II. BACKGROUND**
- III. SCOPE OF WORK REQUESTED**
- IV. RFP SCHEDULE**
- V. GENERAL INFORMATION**
- VI. PROPOSAL FORMAT**
- VII. EVALUATION CRITERIA**
- VIII. SUBMITTAL DUE DATE & TIME**
- IX. EVALUATION & AWARD PROCESS**
- X. CITY RESOURCES**
- XI. SUPPLEMENTAL TERMS & SPECIAL CONDITIONS**
- XII. CERTIFICATION STATEMENTS**
- XIII. BACKGROUND INFORMATION & REFERENCE MATERIALS**
- XIV. APPENDICES**
  - A. Sample Professional Services Contract**

## I. PURPOSE

The City of Sherwood is seeking proposals from qualified firms licensed in the State of Oregon to provide professional traffic engineering consulting services on an on-call basis. The term of the initial contract will be two years with extension options meeting current state and local contracting rules.

The purpose of this request is to provide prospective consultants with information needed to prepare and submit comprehensive proposals to the City of Sherwood for consideration and final selection. Once a top candidate is identified, the City and consultant will confirm goals and outcomes before negotiating a specific scope-of-work for work/task orders and associated fee not-to-exceed. A general description of the services requested are summarized in this RFP.

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 137-048-0220 (Informal Selection Procedure). Proposals may also serve as annual statements of qualifications per OAR 137-048-0120 (List of Interested Consultants) in the event the City solicits statements of qualifications for a bi-annual list of qualified consultants in other categories. In other words, proposals received through this RFP may also serve as the list of qualified consultants in the traffic engineering category.

## II. SCOPE OF WORK REQUESTED

The services requested may include some or all of the following in the final scope of work:

### Task 1: Develop the Scope of Work for Development Traffic Studies

- a. Work with city staff and developers to develop unique scopes of work for traffic impact analysis reports for development, and perform completeness checks prior to land-use submittal.

### Task 2: Review Traffic Studies

- a. Review of traffic impact analyses provided by others and evaluate trip generation, safety, compliance to City ordinances, development code as well as local and regional Transportation System Plans (TSP) and other master plans.
- b. Summarize findings in technical memorandums.

### Task 2: Traffic Operation & Analysis

- a. Provide high level, sketch planning review for long term growth solutions. Produce general order of magnitude estimates of demand and operations in response to proposed or hypothetical transportation improvements.
- b. Review, study and evaluate traffic safety issues and provide technical advice.
- c. Update and maintain models for various travel demand, traffic simulation and traffic signal optimization software, as well as other analytical/deterministic tools.

Task 3: Traffic Design

- a. Provide peer review and design recommendations for street improvement projects, including safety and capacity improvements.
- b. Review engineering plans, review geometric design, intersection design, site distance analysis, and vehicle turning movements using simulation software when requested.

Task 5: Incidental Services.

- a. Coordinate with city staff on design tasks as needed by the City. Prepare cost estimates and written summaries of traffic related infrastructure or proposed projects.
- b. Perform site visits to verify existing conditions.
- c. Obtain traffic counts and provide input on traffic related expenses, equipment and input for annual budgets.

**III. RFP SCHEDULE**

RFP Schedule

|                                      |  |
|--------------------------------------|--|
| RFP released, DJC notices            | August 1 <sup>st</sup> and 3 <sup>rd</sup> , 2016  |
| Last day to submit questions         | August <del>11<sup>th</sup></del> 15 <sup>th</sup> , 2016, 10:00AM (PDT)                                       |
| Q&A/addenda posted (if any)          | August <del>15<sup>th</sup></del> 17 <sup>th</sup> , 2016, 3:00PM (PDT)  |
| Proposals due                        | August <del>19<sup>th</sup></del> 22 <sup>nd</sup> , 3:00PM (PDT)  |
| Evaluation of proposals & selection  | August <del>19<sup>th</sup></del> 22 <sup>nd</sup> – August <del>26<sup>th</sup></del> 29 <sup>th</sup> , 2016 |
| Notice of intent to award            | August 29 <sup>th</sup> , 2016   |
| City Council/URA Resolution to Award | September <del>6<sup>th</sup></del> 20 <sup>th</sup> , 2016  |
| Execute contract & kickoff meeting   | September <del>7<sup>th</sup></del> 21 <sup>st</sup> , 2016  |

**IV. GENERAL INFORMATION**

Pre-Proposal Meeting

There will be no pre-proposal meeting or conference for this request, although proposers may submit questions via email.

List of Proposers/Planholders List

A list of potential proposers will not be maintained or posted for this project.

RFP Document Review and Background Materials

The RFP may be downloaded from the RFP website listed on the cover page or may be obtained from the City of Sherwood, Engineering Department, Monday through Friday, 8am to 5pm.

RFP Questions

Please direct questions and inquiries regarding this solicitation to Jason Waters via email at [watersj@sherwoodoregon.gov](mailto:watersj@sherwoodoregon.gov). The deadline for formal questions will be August ~~11<sup>th</sup>~~ 15<sup>th</sup>, 2016 at 10:00AM (PDT). A summary of all questions received and answers will be posted on the RFP website. The City will remove the name of the firm and person asking each question.

### Addenda and Acknowledgment of Addenda

It is the responsibility of the proposer to regularly check the RFP website for Addenda, if any. The City accepts no responsibility for proposers who fail to check for Addenda and who submit proposals that fail to acknowledge or lack information requested in an Addendum. The City is not responsible for any explanation, clarification, interpretation, or approval made or given in any manner, except by Addenda. **Note: proposers WILL NOT be required to submit an Addendum Acknowledgment Form for Addendum #1.**

### Proposal Withdrawal

A proposal may be withdrawn at any time before the proposal due date and time, by providing a written request for the withdrawal of the proposal to the issuing office. A duly authorized representative of the firm shall execute the request. Withdrawal of a proposal will not prejudice the right of the proposer to file a new proposal.

### Notices

It is the responsibility of the proposer to regularly check the RFP website for all notices associated with this request. The City accepts no responsibility for proposers who fail to check for notices and submit untimely protests.

## **V. PROPOSAL FORMAT**

In order to provide a degree of consistency in review of the written proposals, firms are requested to prepare their proposals in a format similar to that specified below.

### A. Recommended Format

#### 1. Title Page/Cover Sheet

Proposer should identify the RFP subject, prime consulting firm name, contact person and the date of submission.

#### 2. Transmittal Letter

Proposals must include a transmittal letter addressed to the City of Sherwood Project Manager and signed by an official of the firm legally authorized to bind the applicant to its proposal. The transmittal letter must include the name, address, and telephone number of the firm submitting the proposal, and the name, title, address, telephone number, fax number and email address of the person, or persons to contact who are authorized to represent the firm and to whom correspondence should be directed. The letter should not be more than one (1) page long.

#### 3. Executive Summary/Statement of Understanding

The proposer may use this section to introduce the proposal and include a detailed statement of understanding of the project. The executive summary should not be more than two (2) pages long.

#### 4. Consultant Team Qualifications & Experience

Summarize the individual team members' qualifications and experience working on-call as a traffic engineer and also discuss what experiences the

team members have working together. The qualification & experience summary should not be more than (3) pages. Individual resumes can be attached as reference documents, although brevity is encouraged for the proposal document as a whole.

**B. Additional Reference Documents & Information**

Any other information the proposer feels is applicable to the evaluation of the proposal or of their qualification for accomplishing the work should be included in a section titled "Additional Information". Proposers may use this section to address those aspects of the firm or team that distinguish it from others. Additional information is not mandatory.

**C. Fee Schedule**

**DO NOT** INCLUDE INFORMATION ON HOURLY RATES, FEE SCHEDULES OR HOURS ANTICIPATED TO COMPLETE THE WORK.

**D. References**

References are not required with this proposal but may be submitted as Additional Information. The City reserves the right to request and check references at any time.

**E. Certification Statements**

All proposals must contain a signed certification statements. See section XII of the RFP for the certification statements signature page.

**VI. EVALUATION CRITERIA**

**Overall Impression of the Proposal – 15 points / 100**

- Is the executive summary clear, concise and complete?
- Did the proposal follow the general format and instructions outlined in the RFP?
- Was the proposal easy to read and were there grammatical and spelling errors?

**Project Team Qualifications & Experience – 30 points / 100**

- The project team must be qualified to perform the duties specified in this RFP.
- What is the experience of the individual team members and are all they all qualified to work on the project?
- Does the team have experience working on projects together? Have they all worked together on projects before, and if so, which ones? Or have some of them worked together, but not all?
- Is it easy to figure out what experience the team members have and if the team or portions of the team have worked on projects together or is it still a bit unclear after reviewing the proposal?
- Do the team members have the required licenses and certifications to perform all of the work that may be required? Does the proposal discuss which aspects may require certain licenses and certifications and which aspects might not?

Understanding of Need – 35 points / 100

- Is there a good understanding of the local issues-at-hand and how they fit into the regional context?
- Does the proposal distinguish well between technical standards and local concerns of citizens and elected officials?
- Does it seem like the consultant has a good handle on the services requested and the City's needs?

Approach to Work/Task Orders – 20 points / 100

- Does the consultant have substantial experience working on-call for other local agencies?
- Does it seem like they will work and process work orders efficiently?
- Is the consultant well versed in the paradigms of transparency in government, specifically opportunities and constraints?

**VII. SUBMITTAL DATE & TIME**

Three (3) bound copies and one .pdf file of your proposal must be submitted with the project name "ON CALL TRAFFIC ENGINEERING SERVICES" prominently displayed on the cover.

Proposals must be received at the City of Sherwood City Hall by the 3:00PM (PDT) deadline on August ~~19~~ **22nd**, 2016. Faxed or emailed submittals will not be accepted. Mailed proposals must be received by the deadline. Pdf files can be emailed to the Project Manager in lieu of USB jump drive or disc submitted with the proposal.

Proposals shall be addressed to:

City of Sherwood  
Engineering Department  
Attn: Jason Waters  
22560 SW Pine Street  
Sherwood, OR 97140

**VIII. EVALUATION AND AWARD PROCESS**

Selection and Evaluation Process

A Selection Committee assembled by the City will review the proposals. Proposals will be evaluated by a 3-4 person committee to determine which one(s) best meet the needs of the City. Following the submittal deadline, proposals will be reviewed and evaluated in accordance with the aforementioned Evaluation Criteria.

Process

The Selection Committee will review, score and rank all of the proposals received based on the Evaluation Criteria. The committee may then elect to interview the highest ranked proposers or immediately negotiate a contract with the top ranked proposer. If the City elects to conduct interviews, 10 criteria points will be assigned to the interview process and will be added to the total score from the Evaluation Criteria. If interviewed, the questions will be the same for each proposer interviewed.

Once a selection is made, the City will post a Notice of Intent to award a contract on the RFP website and begin negotiations with the selected consultant. If these negotiations are unsuccessful the City will release the primary consultant and begin negotiations with the next highest ranked proposer or cancel the request altogether.

If negotiations are successful, the City Council (the City's contract review board) will approve the contract via resolution, the Notice of Award will be posted, and the contract executed by both parties, after which a kickoff meeting will be scheduled to commence the work.

#### Investigation of References

The City reserves the right to investigate references and the past performance of any proposer or team member at any time with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, its completion or delivery of a project on schedule and its lawful payment of employees and workers.

### **IX. CITY RESOURCES**

City resources, for example anticipated staff time, equipment and materials will be coordinated with the selected consultant during negotiations when needs, roles and responsibilities are better known.

### **X. SUPPLEMENTAL TERMS AND SPECIAL CONDITIONS**

1. The City of Sherwood retains the right, in its sole discretion, to negotiate contract terms with qualified consultants and terminate negotiation of the professional services contract and commence negotiations with another qualified respondent to this RFP.
2. The City of Sherwood may cancel this procurement or reject any or all proposals in accordance with ORS 279B.100.
3. All proposals must state whether the bidder is a resident bidder or non-resident bidder as defined by ORS 279A.120. See Certification Statements page located in section XII of this RFP.
4. Proposals may be publically examined at Sherwood City Hall after, but not before, the Notice of Intent to award a contract has been posted on the RFP website.



5. All information submitted by proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions of the proposal for which proposer requests exception from disclosure consistent with Oregon Law. Any portion of a proposal that the proposer claims constitutes a “trade secret” or is “confidential” must meet the requirements of ORS 192.501, ORS 192.502 and/or ORS 646.461 et seq. If the entire proposal is marked as a constituting a “trade secret” or being “confidential”, at the City’s sole discretion, such a proposal may be rejected as non-responsive.
6. A sample Professional Services Contract is attached for reference and review.
7. During negotiations Proposers may propose to the City Attorney contractual terms and conditions that relate to subject matter reasonably identified in the request for proposal.
8. The City reserves the right to reasonably request additional information or clarification of information provided in the responses without changing the terms of the RFP.
9. The City reserves the right to accept or reject Proposals based on minor technicalities, irregularities, or omissions in a Proposal.
10. Proposers respond to the RFP at their own expense.
11. Solicitation protests shall follow the procedures set forth in OAR 137-047-0730.
12. Contract award protests shall follow the procedures set forth in OAR 137-047-0740.
13. The City reserves the right to keep proposals from firms for annual statements of qualifications per OAR 137-048-0120 (List of Interested Consultants) in the event the City solicits statements of qualifications for a bi-annual list of qualified consultants in other categories.

**XI. CERTIFICATION STATEMENTS**

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Non-Discrimination Clause

The consultant agrees not to discriminate against any client, employee or application for employment or for services, because of race, color, religion, sex, national origin, handicap or age, in accordance with ORS 279A.110(4).

Officer’s signature: \_\_\_\_\_

Type or print officer’s name: \_\_\_\_\_

Type or print firm’s name: \_\_\_\_\_

\*\*\*\*\*

Resident Certificate

Please check one:

**Resident Vendor.** Consultant is a resident vendor as defined by ORS 279A.120(1)(b).

**Non-Resident Vendor.** Consultant is not-resident vendor and will follow the procedures set forth by ORS 279A.120(3).

Officer’s signature: \_\_\_\_\_

Type or print officer’s name: \_\_\_\_\_

Type or print firm’s name: \_\_\_\_\_

\*\*\*\*\*

Proposal Terms & Conditions

The consultant certifies that it has thoroughly examined this request for proposal, including all terms and conditions, and that the consultant’s proposal to the best of their knowledge satisfies all terms and conditions listed in the RFP.

Officer’s signature: \_\_\_\_\_

Type or print officer’s name: \_\_\_\_\_

Type or print firm’s name: \_\_\_\_\_

**\*\*\*This certification statement page must be signed and submitted with your proposal\*\*\***

## **XII. BACKGROUND INFORMATION & REFERENCE MATERIALS**

Please see the project RFP website for additional background information and exhibits related to the On Call Traffic Engineering Services:

<http://www.sherwoodoregon.gov/bids>

## **XIII. APPENDICES**

- A. Sample Professional Services Contract for the City of Sherwood



Home of the Tualatin River National Wildlife Refuge

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

CONTRACT FOR PROFESSIONAL SERVICES

PROJECT NAME:
CONTRACT PARTIES:
C.O.S. PROJECT MANAGER:

City of Sherwood [hereafter called City] and [hereafter called Consultant]

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 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

SAMPLE

## **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 Contractor or shall notify Contractor 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(c), **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(c), **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(c), **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(c), **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, 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', 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, 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 Contractor 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]**