



INVITATION TO BID

Roof Replacement at Police Department

ADVERTISEMENT DATES: March 4, 2020 and March 6, 2020

Address Proposals to:
Darren Caniparoli
Operations Supervisor
City of Sherwood
Public Works Department
15527 SW Willamette Street
Sherwood, OR 97140

Proposals due: March 18, 2020, 2:00 p.m.

Proposals must be sealed in an opaque envelope, plainly marked as follows:
"Roof Replacement at Police Department ITB." Electronically mailed or faxed
Proposals will not be accepted. Include the name and address of the Proposer.

Proposers must submit one (1) hard copy set of the Proposal and one (1) digital,
electronic-file version on a compact disc (CD) or a flash "thumb" drive in
Microsoft compatible or Adobe PDF format.

The City of Sherwood reserves the right to reject any or all Proposals.

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INVITATION TO BID
City of Sherwood
Roof Replacement at Police Department

The City of Sherwood Public Works Department invites qualified contractors and individuals to submit proposals to provide an ITB for the Roof Replacement of the City Police Department.

Sealed Proposals will be accepted until 2:00 p.m. on Wednesday, March 18th, 2020, via mail or personal delivery to Darren Caniparoli, Operations Supervisor, City of Sherwood, 15527 SW Willamette Street, Sherwood, Oregon 97140. Facsimile or electronically transmitted proposals will not be accepted. Late proposals will be rejected and returned to the submitter. No responsibility will be attached to any official of the City for the premature opening of, or the failure to open, a proposal not properly addressed and identified.

The complete Invitation to Bid is on the City's website be obtained here: <https://www.sherwoodoregon.gov/bids>.

Bidders are required to certify non-discrimination in employment practices in accordance with ORS 279A.110(4), and identify resident status as defined in ORS 279A.120(1). Pre-qualification of Proposers is not required. All Proposers are required to comply with the provisions of Oregon Revised Statutes.

The City of Sherwood reserves the right to (1) reject any or all proposals not in compliance with public contracting procedures; (2) postpone award of the contract for a period not to exceed 180 days from the date of proposal opening; (3) waive informalities in the proposals; and (4) select the proposal that appears to be in the best interest of the City.

PUBLISHED: Portland Daily Journal of Commerce

DATES: March 4th, 2020 and March 6th, 2020

SECTION 1 INTRODUCTION

The City of Sherwood, Oregon, is requesting a bid from qualified contractors and individuals to contract with the City to replace the roof at the Police Department

SECTION 2 SUBMISSION OF PROPOSALS

One (1) hard copy and one (1) electronic version on a CD or flash drive in Microsoft compatible or Adobe PDF format must be submitted in a sealed, opaque envelope plainly marked with the Solicitation Name. Proposals will be accepted by mail or personal delivery only to the ITB Coordinator.

Submissions must be legible and comply in all regards with the requirements of this solicitation. All proposals must be signed by a principal of the submitting firm. **All submissions must be physically received by the ITB Coordinator as indicated above prior to the proposal due date specified in Section 5. Misdelivered, late, faxed, and electronically submitted proposals will be considered non-responsive, with no exceptions.** Please do not wait until the last minute for delivery. Proposers mailing a proposal should allow normal mail delivery time to ensure timely receipt of their proposals. Proposals will be opened and read immediately after the proposal deadline at the location specified in Section 4. **Any proposal received after the scheduled closing time for receipt of proposals will not be considered for award of contract and will be returned.** No responsibility will be attached to any official of the City for the premature opening of, or the failure to open, a proposal not properly addressed and identified. The contents of the proposals responding to the invitation to bid shall be confidential until the deadline for submission of proposals. All proposals will become part of the City's official files without obligation.

Proposer Certifications and Acknowledgements. By the act of submitting a proposal in response to this ITB, the proposer certifies that:

1. Proposer has carefully examined all ITB documents, all attachments, and all addenda (if any), fully understands the ITB intent, is able to perform all tasks as described in the ITB, and its proposal is made in accordance therewith.
2. The proposer is familiar with the local conditions under which the work will be performed.
3. The proposal is based upon the requirements described in the ITB, without exception, unless clearly stated in the proposal.
4. The proposer will fully meet all of the City minimum insurance requirements (see Appendix B).
5. 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.

6. The proposer has examined all parts (including addenda) of the ITB, including all requirements and contract terms and conditions thereof, and if its proposal is accepted, the proposer shall accept contract documents conforming thereto.
7. The 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.
8. The proposer has quality experience providing the types of services and duties as described within this ITB.
9. The proposer shall also certify whether the proposer is an Oregon Proposer or a non-resident Proposer.

The proposer acknowledges that, if selected as the successful proposer, the provision of services described this ITB is contingent upon successful negotiation of a limited-duration contract with the City of Sherwood.

Modification. Any proposer may modify its proposal at any time, in writing, prior to the scheduled closing time for receipt of proposals, provided such modification is received prior to the closing time. Any modification must include a statement that the modification amends and supersedes the prior offer and shall be marked with the Solicitation Name and "Proposal Modification."

If the modification concerns the price or terms, the amount of change shall be shown in such a manner as to allow the City to clearly understand the price or terms. For example, "Total price in the sealed document is amended by reducing the contract price by \$5,000." Any ambiguity, should it occur, will be viewed in terms most favorable to the City.

Withdrawal. Proposals may be withdrawn upon written request received from the proposer prior to the time fixed for opening. A proposal may also be withdrawn in person prior to the opening, upon satisfactory presentation of appropriate identification and evidence of authority. Negligence on the part of the proposer in preparing the proposal confers no right for the withdrawal of the proposal after it has been opened. Withdrawn proposals may be resubmitted prior to the date and time the proposals are due, provided that they are then fully in conformance with the ITB.

Duration of Proposal. The proposal, including proposed prices, terms, and conditions, after opening, will be irrevocable until such time as:

- The City specifically rejects the proposal, or;
- The City awards a contract and said contract is properly executed, or;
- 180 days have lapsed from the proposal closing date and the City has not let a contract.

SECTION 3 GENERAL ITB INFORMATION

Solicitation Name and ITB Coordinator

Solicitation Name: Roof Replacement at Police Department ITB

ITB Coordinator:

Darren Caniparoli
Operations Supervisor
City of Sherwood
15527 SW Willamette Street
Sherwood, OR 97140
(503) 625-2334
caniparolid@sherwoodoregon.gov

Proposer Questions. All inquiries, whether relating to the proposal process, administration, deadlines, award, or technical aspects of the contract must be **in writing** and directed to ITB Coordinator as specified above.

All questions must be received no later than the Questions Deadline specified in Section 4. Questions and answers will be provided by email to all prospective proposers on the ITB holders list. Questions submitted after the deadline will not be addressed. When appropriate, substantive questions and answers requiring revisions, substitutions, or clarifications of the Invitation to Bid will be issued as an official addendum as provided below.

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

Proposers are hereby notified that verbal communication may not be relied upon as official communication concerning the ITB. Only answers to those questions responded to by the ITB Coordinator in writing may be relied upon.

Interpretations. No oral interpretations shall be made to any prospective proposer as to the meaning of any of the ITB or contract documents or be effective to modify any of the provisions of the ITB or contract documents.

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 ITB, the decision of the City shall be final and binding upon all parties.

Solicitation Protests. Prospective proposers who believe that this procurement process is contrary to law or that a solicitation document is unnecessarily restrictive, is legally flawed, or improperly specifies a brand name, may submit a solicitation protest. **All protests must be in writing, must include the Solicitation Name and “Solicitation Protest” written on the front of the envelope, and be either mailed or hand-delivered to the ITB Coordinator at the address stated above and received no later than the ITB Protests/Change Requests deadline specified in Section 4.** 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 that 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.

Addenda. The City reserves the right to make changes to the Invitation to Bid by written addenda prior to the closing time and date. Changes or clarifications will be transmitted to prospective proposers on the ITB holders list electronically via e-mail or facsimile. All addenda shall have the same binding effect as though contained in the main body of the ITB documents. No addenda will be issued later than the Addenda Issuance Deadline specified in Section 4, except by an addendum, if necessary, postponing the closing date or canceling the ITB altogether. Each proposer is responsible for obtaining all addenda prior to submitting a proposal. Proposers must acknowledge receipt of the addenda by signing, dating, and returning a copy of the addenda with the proposal prior to proposal closing. Any proposal submitted without the required addenda attached, signed, and dated will be considered non-responsive and will not be considered for contract award. The City is not responsible for a proposer's failure to receive notice of addenda. Any change or modification to the Invitation to Bid will be binding on the City only if it is in the form of written addenda issued by the City.

Intent to Award and Contract Award Protests. The City anticipates issuing notice of intent to award via e-mail by the date specified in Section 4. Any proposer believing itself to have been adversely affected or aggrieved by the selection of the successful proposer may protest the notice of intent to award pursuant to ORS 279B.410. **All protests must be in writing and either mailed or hand-delivered to the ITB Coordinator and received no later than seven (7) calendar days after the date the Notice of Intent to Award was issued,** unless otherwise provided in the Notice of Intent to Award. Protests must include the Solicitation Name and “Award Protest” written on the front of the envelope. 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.

Award of Contract. Award of the contract by City will be to the responsible proposer whose proposal the City determines is the most advantageous to the City based on the evaluation process and evaluation factors described herein and applicable preferences described in ORS 279A.120 and 279A.125. No significant deviation from the terms contained herein is acceptable. The contract will be awarded according to the anticipated solicitation schedule set forth herein or within one-hundred eighty (180) calendar days of proposal closing.

Tie. In case of a tie, the City will decide the matter on its own with a coin toss.

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, along with a justification and citation to the 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 may publish of its own accord, and 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 ITB not exempted from disclosure, without obtaining permission from any Proposer to do so. 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.

Cooperative Procurement. This ITB and the resulting contract is subject to cooperative purchasing by other government entities, as provided by ORS 279A.210. By submitting a proposal, the successful proposer agrees that other public agencies may establish contracts or price agreements directly with the selected proposer under the terms, conditions, and prices of the resulting contract.

SECTION 4 ANTICIPATED SOLICITATION SCHEDULE

The following is the anticipated timeline for receiving proposals and awarding a contract to the most qualified proposer. The City reserves the right to modify this schedule at the City's discretion by written addendum.

Advertise Invitation to Bid	Wednesday, March 4, 2020 and Friday, March 6, 2020
Mandatory Project Walkthrough Location: Sherwood Police Dept. 20495 SW Borchers Drive, Sherwood	Wednesday, March 11, 2020, 2pm
ITB Protests/Change Requests/Questions Deadline	Friday, March 13, 2020, 2pm
Addenda Issuance Deadline	Monday, March 16, 2020
Proposals Due	Wednesday, March 18, 2020, 2pm
Opening of Proposals	Wednesday, March 18, 2020, 2pm
Location of Proposal Opening	Sherwood Public Works 15527 SW Willamette Street Sherwood, OR 97140
Notice of Intent to Award Issued	March 23, 2020
End of Contract Award Protest Period	Wednesday, April 1, 2020
City Council Meeting (for Approval of Contract)	April 7, 2020

SECTION 5 SCOPE OF WORK

The selected contractor will attend mandatory project walkthrough scheduled in **Section 4**. Scope of work is defined below:

- Roof Type: Firestone 0.60mil TPO or equal.
- Remove existing roofing around base flashing.
- Furnish and install mechanically fastened ¼ Dens Deck or equal.
- Over the Dens Deck gypsum board, furnish and install a new 0.60 mil reinforced TPO roof membrane and mechanically attach to the substrate
- All field and base flashing seams will be cleaned before hot air welded.
- Furnish and install new TPO base flashings around all curb penetrations.
- Furnish and install new TPO base flashings around the roof hatch.

- Fabricate and install a new standard color 26-gauge metal hatch flashing under the metal flashing flange of the roof hatch to hold the TPO membrane in place.
- Furnish and install pre-manufactured inside/outside TPO corner flashings at curb penetrations, thru wall scupper drains, pitch pans and wall flashings.
- Furnish and install new pre-manufactured pipe boots on all pipes up to 6" in diameter complete with new stainless-steel clamps and sealant.
- All pipes larger than 6" in diameter will be field wrapped with unreinforced TPO membrane complete with a new stainless-steel pipe clamp and sealant.
- All pipes where a pre-manufactured pipe boot is not feasible will be field wrapped with unreinforced TPO membrane complete with a new stainless-steel pipe clamp and sealant.
- Furnish and install TPO patches at all T-Joints in the field membrane.
- Furnish and install new TPO base flashings at all parapet walls that will extend up and across the top of all walls.
- Furnish and install new TPO base flashings at all parapet walls that will extend up the wall a minimum of 8".
- Furnish and install a metal anchor bar to the top of the flashing and mechanically attach every 12" on center.
- Fabricate and install new TPO clad thru wall drain flashings and mechanically attach to the substrate. Furnish and install new TPO flashings to the drain.
- Furnish and install new TPO membrane in the roof drain assemblies and set in water cut off mastic. Install the clamping ring to the drain body compressing the TPO membrane into the water cut off mastic to insure a watertight seal. Reinstall drain bolts complete with washers, replacing as needed on a time and materials basis.
- Reinstall the drain screens back in place once the drain rings are installed.
- Fabricate and install new 26-gauge galvanized clip metal to be installed along the outside of all parapet walls. Mechanically attach the clip to the wall.
- Fabricate and install new pre-painted standard color 26-gauge galvanized standing seam coping cap around the perimeter of all parapet walls. All new metal coping caps will be installed by hooking the front face into the clip metal to secure the face of the metal to the building. Mechanically attach to the wall with new neoprene gasketed fasteners.
- Furnish a 2-year workmanship warranty.
- Furnish a minimum manufacture's 20-year warranty.
- Upon completion of the above work, remove all tools and debris related to work and leave in clean and orderly condition.

Exclusions:

- All electrical, plumbing, carpentry, scaffolding, deck repair, mechanical and acoustical insulation is excluded unless stated in the work above.
- Any and all sheet metal work or demo work is excluded, unless stated in the above scope of work.

- Asbestos abatement is excluded (if required, contractor to provide cost to perform work).
- Lead abatement is excluded (if required, contractor to provide cost to perform work).
- Permit/Engineering will be performed by the City and is excluded from this scope of work.
- De-bonding of existing fireproofing and/or acoustical insulation on underside of decking during installation of roofing system is excluded from this scope of work.
- Roof protection for other trades and/or temporary roofing is excluded (if required, contractor to provide cost to perform work).

SECTION 6 OTHER INFORMATION AND REQUIREMENTS

Nondiscrimination. By the act of submitting a Proposal in response to this ITB, Proposer certifies, under penalty of perjury, that Proposer has not discriminated against minorities, women, or emerging small business enterprises in obtaining any required subcontracts. The successful contractor agrees that, in performing the work called for by this proposal and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious, creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry, or sexual preference unless the reasonable demands of employment are such that they cannot be met by a person with a particular physical or mental disability.

Employees and Officials Not to Benefit. No employee or elected official of the City of Sherwood shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

No material, labor, or facilities will be furnished by the City unless otherwise provided for in the ITB.

Proposal Costs. Proposers responding to this ITB do so solely at their expense, and the City is not responsible for any Proposer expenses associated with responding to the ITB. Finalists invited to participate in interview evaluations 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 ITB documents or the City's selection decision.

City's Reservation of Rights. The City reserves the right to waive minor irregularities or omissions in compliance with the requirements of this ITB to the extent the City determines it is in the best interest of the City to do so. The City also reserves the right to cancel this ITB at any time if it determines it is in the best interest of the City to do so. Proposers therefore, by proposing, agree that doing so is at their own risk and the City shall have no liability related thereto.

Legal Requirements. Selection of a proposer 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 proposer 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.

Proposers will be 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
BID FORM/SIGNATURE PAGE
[Fill out and submit this page with your Proposal]

Description	Estimated Quantity	Unit	Total Price
Remove and replace current TPO roof	1	Lump Sum	\$

The Bidder agrees to accept payment for the materials and services proposed under this project as specified in the Invitation to Bid dated _____, **2020** based upon the undersigned's own estimate of quantities and costs, the following quote of: _____ Dollars and _____ Cents.

\$_____.

(The amount written in words has precedence.)

This page must be signed with the full name and address of the Proposer submitting the response; if a partnership, by a member of the firm with the name and address of each member; if a corporation, by an authorized officer thereof in the corporate name.

The undersigned verifies that he/she is a duly authorized officer of the company, and that his/her signature attests that information provided in response to this Invitation to Bid is accurate.

The undersigned certifies that the proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

The undersigned certifies that all addenda to the specifications have been received and duly considered and that all cost adjustments associated with the addenda are reflected in this proposal.

Resident Proposer as defined in ORS 279A.120(1)?*	<input type="checkbox"/> YES / <input type="checkbox"/> NO
Proposers certify non-discrimination in accordance with ORS 279A.110(4)	<input type="checkbox"/> YES / <input type="checkbox"/> NO
If awarded a contract pursuant to this solicitation, will Proposer participate in Intergovernmental Permissive Cooperative Purchasing (extend the terms, conditions and prices of such contract to other public agencies)? If no, please explain on a separate piece of paper.	<input type="checkbox"/> YES / <input type="checkbox"/> NO

Proposer hereby makes this proposal to furnish goods and/or services at the price(s) indicated herein in fulfillment of the requirements and specifications of the City as stated in the Invitation to Bid.

_____ Signature of Authorized Official	_____ Date
_____ Printed Name	_____ Telephone Number
_____ Title	_____ E-mail Address
_____ Firm Name	_____ Address
	_____ City, State, Zip Code

*"Resident Bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder".

APPENDIX B SAMPLE CONTRACT



Home of the Tualatin River National Wildlife Refuge

**City of Sherwood
Public Works Department**
15527 SW Willamette Street
Sherwood, OR 97140
503-825-5722

CONTRACT FOR CONSTRUCTION SERVICES >\$100,000

PROJECT NAME:			
CONTRACT PARTIES:			
[hereafter called City]		and	[hereafter called Contractor]
C.O.S. PROJECT MANAGER:			

ACCOUNT #:	6318	FUND #:	18	DEPT:	85	JOB #:	000
VENDOR #:							

SCOPE of WORK:	Attached as Exhibit A <input type="checkbox"/>	FEE SCHEDULE:	Attached as Exhibit B <input type="checkbox"/>
SCHEDULE of WORK:	effective date: _____	expiration date:	_____
PAYMENT:	City agrees to pay Contractor based on the Fee Schedule an amount not to exceed \$ _____ for the Scope of Work.		

A performance bond and a payment bond, each in the amount of 100% of the maximum contract payment amount set forth immediately above, and a maintenance bond effective for one year from the date of project completion in the amount of 10% of the maximum contract payment amount set forth immediately above, ☐ are ☐ are not required for this Contract.

This Contract ☐ is ☐ is not subject to State of Oregon prevailing wage requirements.

CONTRACTOR DATA, REGISTRATION, and SIGNATURE

CONTRACTOR FIRM:	CCB #:
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 2-7 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 870.600.

CONTRACTOR:	_____	_____
	signature	date

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

CITY ENGINEER:	_____	_____
	signature	date
DEPARTMENT DIRECTOR:	_____	_____
	signature	date
FINANCE DIRECTOR:	_____	_____
	signature	date
CITY MANAGER:	_____	_____
	signature	date
CITY ATTORNEY <i>Approved as to Form:</i>	_____	_____
	signature	date

STANDARD CONTRACT PROVISIONS

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

1. Access to Records

The Contractor 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 Contractor which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon 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 Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City. If the payments to the Contractor were in excess of the amount to which the Contractor was entitled by five percent (5%) or more, then Contractor 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 Contractor 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. Contractor 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 Contractor, by mutual written agreement, may terminate this Contract at any time.
- (b) The City, by written notice to the Contractor, 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 Contractor, 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 Contractor'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) Contractor 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 Contractor to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed, or changed in such a way that Contractor no longer meets requirements for such license or certificate.
 - (4) City determines, in its sole discretion, that Contractor has violated section 25, **Information Technology**.

- (d) Either the City or the Contractor 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, Contractor shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice. Upon termination of this Contract, Contractor 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 Contractor 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 Contractor due to a breach by the City, the City shall pay the Contractor 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 Contractor, the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), **Remedies**.
- (d) In the event of early termination, all of the Contractor's work product will become and remain property of the City.

7. Remedies

- (a) In the event of termination under subsection 5(d), **Early Termination of Contract**, hereof, by the City due to a breach by the Contractor, the City may complete the work itself, by contract with another contractor, 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 Contractor shall pay to the City the amount of the excess.
- (b) The remedies provided to the City under section 5, **Early Termination of Contract** and section 7, **Remedies** for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.
- (c) In the event of breach of this Contract by the City, the Contractor'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

Contractor 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-contractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if sub-contractors are employed in the performance of this Contract, the Contractor and its sub-contractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. Contractor further agrees that Contractor will be solely responsible for ensuring any sub-contractors fully comply with the terms of this Contract, and that Contractor will be solely liable for actions or omissions of sub-contractors under this Contract. City reserves the right to review the subcontractors proposed, and the Contractor shall not retain a subcontractor to which City has a reasonable objection.

9. Compliance with Applicable Law

In connection with its activities under this Contract, Contractor 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 Contractor's services involve engineering or planning consulting, the standard of care applicable to Contractor'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. Contractor will re-perform any services not meeting this standard without additional compensation.

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 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. Contractor shall obtain, at Contractor's expense, and keep in effect until final acceptance by the City, "all risk" Builder's Risk Insurance (including earthquake and flood) covering the real and personal property of others in the care, custody, and control of the Contractor. Coverage shall include theft and damage to building interiors, exterior, in transit and offsite storage. The minimum amount of coverage to be carried shall be equal to the maximum compensation under this Contract, as specified on the cover page of this Contract. Contractor shall be financially responsible for any deductible applied to loss. This insurance shall include the City, the Contractor, and its sub-contractors as their interests may appear. 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.

12. Ownership of Work Product

All work products of the Contractor, which result from this Contract, are the exclusive property of the City; provided, that Contractor 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 Contractor has resigned, this Contract has been terminated, Contractor's scope of services has been modified, or Contractor's services under this Contract have been completed.

13. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub 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 Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost.

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 Contractor may amend this Contract at any time only by written amendment executed by the City and the Contractor.
20. **License**
Prior to beginning work under this Contract, the Contractor shall provide a Construction Contractor's Board (CCB) license number in the space provided on page one of this Contract.
21. **Payment to Vendors and Sub-contractors**
Contractor must promptly pay any persons supplying services, material, or equipment to Contractor in its performance of the work under this Contract. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.
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/Contract Drawings
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. Contractor, by the signature of its authorized representative, hereby acknowledges that he or she has read this Contract, understands it and agrees to be bound by its terms and conditions.
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 Contractor access to City's information technology systems is necessary for the performance of this Contract:
(a) Contractor 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) Contractor 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 Contractor'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) Contractor will not attempt to access any City information technology resources beyond those necessary for performance of this Contract; and
(d) Contractor will be solely liable for any damages to City's information technology systems, data breaches, and any other losses or damages relating to Contractor'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 Contractor Contact specified on the cover page of this Contract at the address for the Contractor 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) Contractor Identification. Contractor shall furnish Contractor's employer identification number to City, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Contractor's Social Security number.
- (b) Duty to Inform. Contractor shall give prompt written notice to City if, at any time during the performance of this Contract, Contractor 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 Contractor shall constitute neither agreement with nor acquiescence in Contractor's statement or claim, and shall not constitute a waiver of any of City's rights.
- (c) Independent Contractor. Contractor 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, Contractor shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Contractor'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 Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or 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 279C.505, Contractor shall:
 - (1) Make payment promptly, as due, to all persons supplying to Contractor 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 Contractor 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.
 - (5) Demonstrate that an employee drug testing program is in place.
- (b) As provided by ORS 279C.530, Contractor 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 Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor 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, Contractor 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 Contractor 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 279C.520:
 - i. A person may not be employed for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279C.100, the employee shall be paid at least time and a half pay:

- (1) For all overtime in excess of eight (8) hours in any one day or forty (40) hours in any one week when the work week is five (5) consecutive days, Monday through Friday; or
 - (2) For all overtime in excess of ten (10) hours in any one day or forty (40) hours in any one week when the work week is four (4) consecutive days, Monday through Friday; and
 - (3) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.
 - ii. Contractor 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.
 - iii. Contractor must comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. Contractor's compliance with this section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles City to terminate this Contract for cause.
 - iv. Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.
- (e) As provided by ORS 279C.510, if this is:
- (1) A contract for demolition, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.
 - (2) A contract for lawn and landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- (f) As provided by ORS 279C.515:
- (1) If the Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the Contractor or a subcontractor in connection with this Contract as the claim becomes due, the City may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract.
 - (2) If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or the Contractor, the Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the ten (10) day period within which payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
 - (3) If the Contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
 - (4) Paying a claim in the manner authorized in this section does not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.
- (g) As provided by ORS 279C.580, Contractor shall include in each subcontract for property or services Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:
- (1) A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of amounts the City pays to Contractor under this contract.
 - (2) A clause that requires Contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from Contractor.
 - (3) A clause that requires Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. Contractor may change the form or the regular administrative procedures Contractor uses for processing payments if Contractor:
 - a. Notifies the subcontractor in writing at least 45 days before the date on which Contractor makes the change; and
 - b. Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
 - (4) An interest penalty clause that obligates Contractor, if Contractor does not pay the first-tier subcontractor within thirty (30) days after receiving payment from the City, to pay the first-tier subcontractor an interest penalty on amounts due in each payment Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. Contractor or a first-tier subcontractor is not obligated to pay an interest penalty if the only reason that Contractor or a first-tier subcontractor did not make payment when payment was

due is that Contractor or a first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty:

- a. Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and
- b. Is computed at the rate specified in ORS 279C.515(2).

Additionally, Contractor, in each of Contractor's subcontracts, shall require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards set forth above in each of the first-tier subcontractor's subcontracts and shall require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractor's subcontracts with each lower-tier subcontractor or supplier.

[SIGNATURES ON COVER PAGE TO CONTRACT]

APPENDIX C
ATTESTATION OF COMPLIANCE WITH TAX LAWS
[Complete and submit this page with your Bid]

I, _____, representing _____ (Bidder/Proposer)
(Insert printed name) (Insert name of Firm)

hereby attest that:

1. I am an authorized agent of Bidder/Proposer, and I have full authority from Bidder/Proposer to submit this attestation and accept the responsibilities stated herein.
2. I have knowledge regarding payment of taxes of Bidder/Proposer, and to the best of my knowledge, Bidder/Proposer is not in violation of any Oregon tax laws, including, without limitation, ORS 305.620 and ORS chapters 316, 317 and 318.
3. Bidder/Proposer shall provide written notice to City within two business days of any change to its compliance with tax laws.

Authorized Agent Signature

Date

Title