

Civic Facilities Study



Request for Proposal

Proposals are due:

September 30, 2014

City Elected Officials

Mayor Lou Ogden
Council President Monique Beikman
Councilor Wade Brooksby
Councilor Frank Bubenik
Councilor Joelle Davis
Councilor Nancy Grimes
Councilor Ed Truax

Submit Proposals To:

City of Tualatin
Attn. Sara Singer, Deputy City Manager
18880 SW Martinazzi Ave.
Tualatin, Oregon 97062
503.691.3065

Legal Advertisement

The City of Tualatin is seeking sealed proposals from qualified consultants to provide professional consultation and project design services. Consultants are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required.

Sealed proposals will be received until 5 p.m. on Tuesday, September 30, 2014, to Sara Singer, Deputy City Manager at 18880 SW Martinazzi Ave., Tualatin, Oregon 97062. There will be no formal opening. Facsimile proposals will not be accepted. Proposals will not be accepted after the stated date and time.

Proposal packets may be downloaded from www.tualatinoregon.gov or may be obtained by calling (503)691-3065.

Proposers are required to certify non-discrimination in employment practices, and identify resident status as defined in ORS 279A.120(1). Pre-qualification of proposer is not required. All proposers are required to comply with the provisions of Oregon Revised Statutes and the City of Tualatin Municipal Code.

The City of Tualatin reserves the right to (1) reject any or all proposals not in compliance with public bidding procedures, 2) to postpone award of the contract for a period not to exceed sixty (60) days from the date of proposal opening, (3) to waive informalities in the proposals, and (4) to select the proposal which appears to be in the best interest of the City.

PUBLISHED: September 4, 2014

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SECTION 1: INTRODUCTION AND BACKGROUND

Project Summary

As the City and community explored the future of the Council Building and analyzed whether to move forward with implementing the Seneca Street extension in conjunction with the Nyberg Rivers Development in the fall of 2013, the public expressed an interest in completing a Civic Facilities Study to determine the City's future facility needs for City offices and community meeting spaces. Concurrently, during the update of the City's Tualatin Tomorrow Vision Plan in summer of 2013, a similar need was expressed to consolidate city services into one city hall facility and provide more community meeting spaces. During the FY2014-2015 budget process, it was agreed to include funding for a Civic Facilities Study to complete this work.

What are the Project Goals?

- Assist the City in planning for future facilities for the organization and the community.
- Produce a report which helps the City plan for future capital expenditures and informs the community about capital needs.

What is the Project Objective?

- Work with City staff to use a broad range of tools for engaging a wide range of community stakeholders in the process, resulting in a report which is reflective of all community and organizational needs.
- Use existing reports and master plans to help identify existing conditions.
- Examine options including sharing space with other government jurisdictions (County or state offices) and look at other properties or buildings in Tualatin which might meet City facility needs.
- Identify opportunities to leverage grant funding while meeting needs expressed by the community.
- Consider design opportunities which promote the City's economic development goals and help generate revenue.
- Include the following City departments/facilities in the evaluation: Administration, Legal, Community Development, Community Services (including Library), and Finance. Include Police, Public Works and Information Services departments to include in existing conditions and look at potential impacts on these departments and facilities.

Who is the Audience?

There are many stakeholders who the City expects to engage during this process. The City is seeking community-wide input to identify the needs for city facilities, as well as identifying

space needs through analysis and interviews with City staff. The final report will serve to help the community and the organization see the “big picture” impact of the organization and community needs and wants.

SECTION 2: SCOPE & SCHEDULE OF WORK

Scope of Work

The scope of work outlines the anticipated consultant tasks and responsibilities for the City Facilities Study. In responding to this RFP, the consultant may offer alternative approaches for consideration; however, the integrity of the process must remain intact, particularly in maintaining the previously established goals and in utilizing citizens' suggestions for action.

The consultant may perform other duties not listed below, but only as expressly approved by City staff.

Consultant Tasks/Requirements

KNOWLEDGE AND EXPERIENCE: The successful respondent to this RFP will have professional expertise in developing municipal facilities plans and identifying estimated capital costs for planning, designing and constructing the facilities. The development plan shall encompass the next 20 years of anticipated growth. The ideal respondent will have the following qualifications:

- Experience working with municipalities of similar sizes.
- Experience in the preparation of facility plans for similarly sized organizations.
- A demonstrated history of successful facility planning efforts.
- Experience in preparing budget estimates for design and construction of public facilities.
- Adequate, qualified staff with appropriate experience to perform the development planning effort within the designated time period.

This solicitation is seeking proposals from qualified consulting firms experienced in preparation of long range Civic Facility plans.

SCOPE OF SERVICES: The preliminary scope of work is as follows:

- Review documents and plans for existing city buildings.
- Conduct interviews with all City department representatives to identify and prioritize space and facility needs.
- Identify utilities and infrastructure as appropriate.
- Planning meetings with the Civic Facilities Study Task Force.
- Participate in a public community workshop.
- Forecast parking needs as appropriate.

- Prepare an incremental project budget estimate forecast for the full 20 year plan.
- Final planning session to discuss review comments and program conclusions.
- Develop summary planning document for staff and Task Force review.
- Present recommended plan to the City Council for adoption.

GUIDING CITY STAFF: The consultant will be responsible for helping City staff to develop a successful outreach strategy to inform the facilities planning process.

While the consultant will provide guidance, assistance and technical expertise to the process, City staff will be primarily responsible for implementation of the facilities planning process. City staff will:

- Serve as the liaison between the consultant and the Civic Facilities Task Force;
- Provide logistical support to the Task Force, including agendas and meeting arrangements;
- Serve as primary contact for the consultant;
- Coordinate outreach and public communication;
- Review drafts of the Civic Facilities Plan; and,
- Assist the consultant in preparing for the presentation of the report to the City Council.

The consultant will facilitate some Task Force meetings, Organizational stakeholder meetings and other workshops or open houses.

PUBLIC INVOLVEMENT PROMOTION AND COORDINATION: The consultant and staff will work with the Task Force, City staff and other stakeholders to promote awareness of the process with the public, and continue to seek new ways of soliciting public input. Activities and actions led by City staff, the Task Force and the consultants will include developing information for the City's website, preparation of newsletter articles, online citizen engagement, marketing materials, open houses, public events and presentations at public meetings. The consultant may be asked to develop, review or assist with material or presentations. The consultant will be asked to assist in the development of the public involvement plan for the project.

Out of Scope

Items which would be considered out of the scope of this project include studying an aquatic center, recreational complex or other large scale recreation facility.

Proposed Project Timeline

- RFP to Consultants September 4, 2014
- Proposals Due September 30, 2014
- Consultant Selection October 15, 2014
- Project October 2014-March 2015
- Plan Adoption April 2015

SECTION 3: PROPOSAL CONTENT & FORMAT

Proposals must address all submission requirements set forth in this RFP, and must describe how the services will be provided. Page limits are noted, when relevant, and assume 8 ½ x 11 inch paper and single spaced lines.

The City's proposal format and administrative requirements are set out below. These are intended to facilitate the City's ability to quickly and accurately evaluate proposals. Failure to follow these format and administrative requirements may affect the scoring of proposals.

Page Limit

Proposals must be clear, succinct and should not exceed 20 pages, including resumes, work examples and any other supporting documents.

Cost of Preparing Proposals

All costs incurred in preparing and submitting a proposal in response to the RFP is the responsibility of the proposer and shall not be reimbursed by the City.

Proposal Validity Period

Each proposal shall be irrevocable for a period of seventy (70) days from the proposal opening date.

Commitment to Sustainability

In an effort to promote greater use of recycled and environmentally preferable products and to minimize waste, the City encourages all proposals submitted in hard copy to be prepared simply and economically. The use of special bindings, unnecessary colored displays and irrelevant promotional materials is neither required, nor desired. Double sided printing on recycled paper and/or the use of reusable products is preferred.

Title Page

Include a title page with the submitted proposal. Include the following information on the title page: 1) the RFP title; 2) the name, title, address, telephone number, fax number, and email address of proposer's primary contact person; and, 3) the date of submission. Proposers may include other information on the title page in addition to the listed information, but not in lieu thereof.

Transmittal Letter

Include a transmittal letter with the proposal. The letter should identify by name and contact information the one person the proposer wishes the City to contact after proposals have been evaluated, scored, and ranked. The letter may include any other information or insights the proposer deems relevant, but in no instance may the letter exceed two pages in length.

Table of Contents

Include a table of contents with the submitted proposal. All material items comprising the proposal should be clearly identified and able to be easily located.

Submission Requirements

Interested consultants are to submit 3 hard copies and an electronic version of the proposal on or before September 30, 2014 at 5 p.m. (PDT). Proposals should be submitted to:

City of Tualatin
Sara Singer, Deputy City Manager
18880 SW Martinazzi Ave.
Tualatin, Oregon 97062
ssinger@ci.tualatin.or.us

Late proposals cannot be accepted and will be returned unopened to the respondent. Respondents are encouraged to follow the format described in Sections 3 and 4 of the RFP.

SECTION 4: SUBSTANTIVE REQUIREMENTS OF THE PROPOSAL

The following information is requested to allow the City to evaluate Proposer responsibility and responsiveness to perform work described under the “Scope of Work” heading. If a contract is awarded, the City shall select the proposal which best meets the criteria outlined in the Scope of Work and based on the evaluation factors described in this RFP.

Experience

Provide a description of the firm’s experience in the preparation of public facility development plans for cities and counties which address the key elements of the proposed scope of work.

What is the Cost of the Project?

Provide a detailed project budget with the following information. Please state assumptions clearly. Given the information provided in the Scope of Work and the total budget of \$80,000 for the project, please provide a detailed budget of how the funds would be allocated. Also include hourly rates for the project team, an estimate of the number of hours of work for each team member, tasks to be performed, and any other anticipated expenses, direct or indirect.

Proposer Qualifications

Interested firms must submit statements of qualifications including the following:

- Background of firm. Include a brief history of the firm and types of services the firm is qualified to perform.
- Qualifications of the firm in performing this type of work. Provide a minimum of three and up to five references for similar projects. Include the contact name(s), address, and telephone number for each reference.
- Project team members and their qualifications. Identify individuals who will complete this work, their experience, individual qualifications, and roles they would be assigned for this project. Please include descriptions of similar projects undertaken by the individuals in the last 36 months. Include pertinent resumes of assigned personnel.

Project Approach & Understanding

Interested firms must submit statements of project approach and understanding including the following:

- Describe the proposed process for defining project scope. Description of management of project scoping. Please describe specific process and tools for this scope of work.
- Describe how the proposed approach meets the goals and objectives of the project and the characteristics described in the scope of work. This will be a major part of the selection process.
- Describe other characteristics of service which would add value to the process.

- Describe experience in public process strategies, design, implementation, and coordination.

Work Product Samples

Provide examples of work products for similar projects including but not limited to a schedule, work plan, task lists, and sample pages from a final report or public document created for the project.

Time Requirements

Demonstrate a practical approach to meeting the City's specific deadlines by providing detailed information as to how the firm proposes to meet the timelines and reporting deadline requirements of the project.

Additional Services

Provide a brief description of any other services that your firm could provide the City and an approximation of the hourly charge for each service of this type. Such services would be contracted for on an "as needed" basis, to be provided and billed for separately.

SECTION 5: PROPOSAL EVALUATION PROCEDURES

To simplify the review process and to obtain the maximum degree of comparability, the proposal must follow the outline described in the RFP.

Evaluation Criteria

A selection committee consisting of City staff and members of the Task Force will review submitted proposals. Committee members will evaluate the proposals to determine which one best meets the needs of the City. Evaluation will be based on the following described criteria. Award will be made to the highest ranking consultant.

All submittals will be evaluated on the completeness and quality of the content. Only those proposals which provide complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail.

Each selection committee member will use the five evaluation factors listed in the table below to evaluate submitted proposals. Each evaluation factor is given a weight, reflecting its importance in the City's selection process. The table below shows the evaluation factors and weighing factors relevant to this solicitation.

Evaluation Factor	Weighing Factor
1. Transmittal Letter	1
2. Experience & Qualifications of Project Team Members and Firm	4
3. Project Understanding & Approach	4
4. Examples Provided of Similar Work Products	3
5. Contract Price	3

The quality of response to the requirement that the proposal contain a transmittal letter will be judged on a pass/fail scale. A passing proposal will be awarded four points for each of the two requirements met; a failing proposal will be awarded zero points for each of the requirements not met. The failure to include a transmittal letter with the proposal will reduce the proposer's total score, but not automatically eliminate the proposal from further consideration.

The evaluation factors will be judged on a scale of zero to four. Each of the evaluation factors will be awarded points based on the evaluator's judgment of the quality of the response as to

that particular evaluation factor. Fractional points (e.g., 3.6 or 1.75) may be awarded. Points awarded to reflect the quality of the response may be assigned individually or by a consensus of the evaluation committee. Scoring will reflect the following rankings:

Quality of Response	Rankings
1. Excellent Response	4
2. Good Response	3
3. Average Response	2
4. Poor Response	1
5. No Response	0

The proposal’s score is the product of the weighing factors times the points each evaluator assigns based on the evaluator’s judgment of the quality of the response. The evaluators’ scores are then totaled.

Selection Process

Upon receipt of the proposals, the selection committee will evaluate all responsive proposals as described in the above criteria to determine a top tier of responsible proposers whose proposals appear to best meet the requirements set forth by the City. The City anticipates the top tier to consist of two finalists. However, this number may increase to three if there is another competitive proposal. The City may also reduce the number of finalists in the top tier to only one if the excluded proposers have no reasonable chance to be the most advantageous proposer.

At the City’s option, interviews may be part of the evaluation process to determine which proposers best meet the requirements outlined in the RFP. The Project Manager will schedule any necessary interviews and notify the selected proposers.

Intent to Award: Discussions or Negotiations

After determination of the top tier finalists, the City will provide written notice to all proposers of its intent to award the contract to the highest ranked proposer and then commence with negotiations. If no conclusions are reached regarding a finalist, the City may engage in discussions with all top-tier proposers and accept revised proposals from them and following evaluation, scoring and ranking of the revised proposals as provided in this section, commence negotiations with top-tier proposers starting with the highest ranked proposal.

The decision whether to engage in negotiations or discussions with top-tier proposers shall be made at the sole discretion of the City based on its reasonable judgment.

The City reserves the right to cease negotiations with the highest ranked proposer, and proceed to negotiate with the next highest ranked proposer, (and so on down the list) until such time as an agreement can be reached or the City decides to cease all negotiations.

Investigation of References

The City reserves the right to investigate references and the past performance of any proposer 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.

Clarification of Proposals

The City reserves the right to obtain clarification of any point in a firm's proposal or to obtain additional information necessary to properly evaluate a particular proposal, but will not, in any way, provide an opportunity to change any fee amount originally proposed. Failure of a proposer to respond to such a request for additional information or clarification could result in rejection of the firm's proposal.

Award Recommendation

City staff will inform the successful respondent of selection as the consultant. The successful respondent will be required to complete a Personal Services Agreement with the City.

Reservation of Rights

City reserves all rights regarding the RFP, including, without limitation, the right to:

- a. Amend, delay, or cancel the RFP without liability if City finds it is in the best interest of the City to do so (see generally ORS 279B.100);
- b. Reject any or all proposals received upon finding that it is in the best interest of the City to do so (see generally ORS 279B.100);
- c. Waive any minor informality or non-conformance with the provisions or procedures of the RFP, and seek clarification of any proposal, if required;
- d. Reject any proposal that fails substantially to comply with all prescribed RFP procedures and requirements;
- e. Negotiate a Statement of Work based on the Scope of Work described herein and to negotiate separately in any manner necessary to serve the best interest of the public;
- f. Amend any Contracts that are a result of the RFP; and
- g. Engage consultants by selection or procurement independent of the RFP process or any Contracts or agreements to perform the same or similar services.

Although price is a consideration in determining the apparent successful proposer, the intent of the RFP is to identify a proposal from a proposer that has a level of specialized skill, knowledge and resources to perform the work described in the RFP. Qualifications, performance, history, expertise, knowledge and the ability to exercise sound professional judgment are primary considerations in the selection process. Due to the highly technical nature of some of these tasks, the proposer with the lowest price proposal may not necessarily be awarded a contract. City reserves the sole right to determine the best proposal.

ATTACHMENT A: TUALATIN PERSONAL SERVICES AGREEMENT

CITY OF TUALATIN PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is entered into by and between the City of Tualatin, a municipal corporation of the State of Oregon ("City"), and _____ ("Contractor").

Section 1. Contract Documents. The Contract Documents, which together form the complete Agreement between the parties, consists of the following documents in descending order of precedence: (i) this Agreement; (ii) any documents specifically referenced in this Agreement; (iii) the attached Scope of Work (Exhibit A); the attached hourly rate schedule (Exhibit B); and (iv) the Tualatin Public Works Design Standards. To the extent there is any conflict between the Contract Documents, the conflict is resolved by the order of precedence above. There are no other Contract Documents other than those listed.

Section 2. Work.

- A. Completion.** Contractor must complete all Work that is generally described as set forth in Exhibit A, which is incorporated into this Agreement as if fully set forth.
- B. Authenticity by Contractor.** All written documents, drawings, and plans submitted by Contractor in completing the Work must bear the signature, stamp, or initials of Contractor or Contractor's authorized Project Manager.
- C. Qualified Professionals.** All Work must be performed by qualified engineers and other professionals that are properly licensed under the laws of the State of Oregon.
- D. City Standards.** All design work must be according to City of Tualatin standards, including but not limited to, the Tualatin Municipal Code and Tualatin Public Works Standards, applicable Master plans, and all other applicable documents referenced in any of these documents.
- E. Solely Responsible.** Contractor is solely responsible for all Work under this Agreement, including all services, labor, materials and supplies, documents, permits and other requirements to complete the Work, whether produced by Contractor or any of Contractor's subcontractors or Contractors, except for those items identified as the responsibility of the City.
- F. Sufficient Plans.** Contractor warrants that the Agreement specifications and plans, if any, prepared by Contractor will be adequate and sufficient to accomplish the purposes of the project and that review or approval by the owner of the plans and specifications does not diminish the warranty of adequacy.
- G. Project Costs.** In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the project, given the uncertainty with such projections, City acknowledges Contractor makes no warranty that City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Contractor's opinions, analyses, projections, or estimates.
- H. Subsurface Investigations.** City acknowledges Contractor makes no warranty about subsurface conditions and cost/execution effects, even if analyzed, as soils, foundation, ground water, and other subsurface investigations may vary significantly between successive test points and sample intervals.
- I. Record Drawings.** Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. Engineer is not responsible for errors or omissions in the information from others that are incorporated into the record drawings.
- J. Additional Work.** If City requests Contractors to provide additional services not included in the Work described on Exhibit A, the parties will enter into a written amendment to include such Work. The Agreement price for such additional Work will not exceed Contractor's hourly rate as agreed to in Exhibit A. No compensation for additional services will be paid or owing unless both parties specifically agree in writing to such additional compensation and services.

Section 3. Effective Date. The effective date of this Agreement is the date both Parties sign this Agreement ("Effective Date"). If the parties sign on separate dates, the date of the last signature is the Effective Date.

Section 4. Time is of the Essence. Contractor agrees that time is of the essence under this Agreement.

Section 5. Standard of Care. In the performance of its professional or technical services, Contractor must use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the

Portland Metropolitan Area. Contractor will reperform any services not meeting this standard without additional compensation. Contractor's reperformance of any services, even if done at City's request, will not be considered as a limitation or waiver by City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care or this Agreement.

Section 6. Duty to Inform. If during the performance of this Agreement or in the future, Contractor becomes aware of actual or potential problems, faults, or defects in the projects, any nonconformance with the federal, state or local law, rule, or regulation; or has any objection to a decision or order made by City with respect to such laws, rules, or regulations, Contractor must give prompt written notice to City's Project Manager. Delay or failure by City to provide a written response to Contractor will not constitute agreement with, nor acquiescence to, Contractor's statement or claim, nor constitute a waiver of City's rights.

Section 7. Independent Contractor; Responsibility for Taxes and Withholding.

- A. Independent Contractor.** Contractor will perform all Work as an independent Contractor. The City reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, the City may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- B. Conflict of Interest.** If Contractor is currently performing work for another government, corporation, or other entity, Contractor by signature to this Agreement, represents and warrants that: Contractor's Work to be performed under this Agreement creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the government, corporation, or other entity for which Contractor currently performs work would prohibit Contractor's Work under this Agreement.
- C. Not an Officer, Employee or Agent.** Contractor understand and agrees that Contractor is not an "officer," "employee," or "agent" of the City, as those terms are used in ORS 30.265.
- D. Federal and State Taxes.** Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Agreement and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from City under this Agreement. Contractor is not entitled to, and expressly waives all claims to City benefits; including, but not limited to: health and disability insurance, paid leave, and retirement.

Section 8. Subcontracting.

- A. Services.** Contractor's services are unique and as such, will not enter into any subcontracts for any of the Work required by this Agreement without City's prior written consent.
- B. Subcontract.** If City permits a subcontract as set forth in subsection A, in addition to any other provisions City may require, Contractor must include in any permitted subcontract under this Agreement provisions to ensure that City will receive the benefit of subcontractor's performance as if the subcontractor were the Contractor. City's consent to any subcontract will not relieve Contractor of any of its duties or obligations under this Agreement.
- C. Written Agreements.** All subcontracts for services must be issued under written agreements that include all provisions required under Oregon Public Contracting law and substantially similar to the City's Agreement provisions. Upon request by the City, Contractor must provide City a copy of all agreements with subcontractors who are performing work under this Agreement.

Section 9. Agreement Price.

- A. Hourly Rate.** City agrees to pay Consultant on an hourly basis for actual hours worked on this project. The hourly rate is shown on Exhibit B, which is attached hereto and incorporated into this Agreement as if fully set forth.
- B. Maximum Fee.** In no event will City pay Contractor a price not to exceed _____, which is inclusive of all hours necessary to complete the Work.

Section 10. City Funds for Payment. City certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement; **OR** Contractor understand and agrees that City's payment of amounts under this Agreement is contingent on City receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow City, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

Section 11. Payment Process.

- A. Invoices.** Contractor must furnish City an invoice for services on a monthly basis. The invoice must contain an itemized statement showing the number of hours worked on the project by Contractor and the specific Work or portions of the Work performed.
- B. Reimbursable Expenses.** City's Payment for reimbursable expenses is limited to those reimbursable expenses set forth on Exhibit A, which are actually incurred by Contractor and itemized on Contractor's invoice for services.
- C. Payment for Services.** City will pay Contractor for services invoiced within thirty (30) days of receiving an itemized invoice ("net thirty"), unless City disputes the invoice; in which case, City will only pay for those services not in dispute.

Section 12. Contractor's Representations.

- A.** In order to induce City to enter into this Agreement, Contractor makes the following representations and warranties:
 - (i) Contractor has the power and authority to enter into and perform his Agreement;
 - (ii) This Agreement, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;
 - (iii) Contractor has examined and carefully studied all Contract Documents and the other related data identified in the Contract Documents;
 - (iv) Contractor has become familiar with all conditions that may affect cost, progress, and performance of the Work;
 - (v) Contractor has the skill and knowledge possessed by well informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession;
 - (vi) Contractor must, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
 - (vii) Contractor prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- B. Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

Section 13. Suspension of Work. The City may suspend work upon a finding that any of the following grounds exist:

- A. False, Misleading, or Erroneous Data.** False, misleading, or erroneous data or information submitted in Exhibit A or any other plans submitted in connection with the Work.
- B. Materials or Workmanship.** Materials or workmanship which do not meet specification for the construction or installation of the Work; or construction or installation which varies from Exhibit A.
- C. Violations.** Violation of any of the provisions of the Tualatin Municipal or Development Code governing the Work.
- D. Stop Work Orders.** Upon suspension of the Work as provided in this Section, the City will cause to be issued a written "stop work order" to be sent to Contractor as provided in the notice provisions of this Agreement.

Section 14. Notice to Parties. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder must be given in writing by personal delivery, mail facsimile, or email.

- A. Notice by Personal Delivery.** Any communication or notice given by personal delivery is effective when actually delivered.

- B. Notice by Mail.** Notice given by mail must be by postage prepaid, to Contractor or City at the address, set forth herein, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed is effective five (five) days after mailing.
- C. Notice by Email.** Any communication or notice given by email is effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- D. Party to be Notified.** Unless otherwise notified in writing as set forth above, notices must be given to the Project Managers. If a Party's Project Manager is changed, notification of the change must be promptly made in writing to the other party. If a party receives a communication from the other party not executed by the Project Manager, the party may request clarification by the other party's Project Manager, which must be promptly furnished.
 - 1. City's Project Manager**
Name, Title, Address, Phone, Fax, Email.
 - 2. Contractor's Project Manager**
Name, Title, Address, Phone, Fax, Email

Section 15. City's Obligations. In addition to obligations of City described in other parts of the Agreement Documents, City is responsible for providing the following:

- A. Timely Response.** City will respond in a timely manner to all properly submitted requests from Contractor.
- B. Cooperation.** City will cooperate with Contractor to promptly review, comment on and approve all proposals and work that comply with the requirements of this Agreement.

Section 16. Assignment of Agreement. No assignment of any rights, duties, responsibilities, or interests in the Agreement will be binding on the other party without the written consent of the party sought to be bound. No assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.

Section 17. Successors and Assigns. The provisions of this Agreement are binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

Section 18. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties must be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Section 19. Merger Clause; Waiver. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind the parties unless in writing and signed by both parties and all necessary City approvals have been obtained. Such waiver, consent, modification or change, if made, is effective only in the specific instance and for the specific purpose given. Whenever, under this Agreement, either party, by a proper authority, waives either party's performance in any respect or waives a requirement or condition of either party's performance, the waiver so granted, whether express or implied, will only apply to the particular instance and will not be deemed a waiver forever of subsequent instances of the performance, requirement or condition. No such waiver will be construed as a modification of the Agreement regardless of the number of times that either party may have waived performance, requirement, or condition.

Section 20. Agreement Construction. This Agreement shall not be construed against either party regardless of which party drafted it. Other than as modified by this Agreement, the applicable rules of Agreement construction and evidence will apply.

Section 21. Ownership of Intellectual Property.

- A. Original Works.** All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of City. City and Contractor agree that such original works of authorship are "work made for hire" of which City is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Contractor hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City's reasonable request, Contractor will execute such further documents and instruments necessary to fully vest such rights in City. Contractor forever waives any and all rights relating to

original Work Product created pursuant to the Work; including, without limitation: any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. In the event that Work Product created by Contractor under this Agreement is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to City an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf. In the event that Work Product created by Contractor under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the City's behalf and in the name of the City an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf. If the Work Product is the property of the Contractor-Architect, by execution of this Agreement, the Contractor-Architect grants to City an exclusive and irrevocable license to use the Work Product.

- B. Contractor Intellectual Property.** All pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other propriety rights of Contractor are and will remain the exclusive property of Consultant. Notwithstanding the foregoing, Contractor hereby grants to City an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on City's behalf.
- C. Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the City's behalf and in the name of the City, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on City's behalf.

Section 22. Records Maintenance; Access. Contractor must maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Contractor must maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that City, the State of Oregon, and the federal government and their duly authorized representatives may have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Contractor's that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor must retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

Section 23. No Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement. Contractor and the City are the only parties to this Agreement and are intended to be the only entities entitled to exercise and enforce the rights and obligations created by this Agreement.

Section 24. Nondiscrimination; Compliance with Applicable Law. Contractor agrees that no person shall, on the grounds of race, color, religion, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or veteran status suffer discrimination in the performance of this Agreement. Contractor must comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement.

Section 25. Public Contracting Requirements. Contractor must comply with provisions of ORS 279A.110, ORS 279B.2210, 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270; which are incorporated by reference herein. City's performance under the Agreement is conditioned upon Contractor's compliance.

Section 26. Registered in Oregon and City of Tualatin. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor must promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement. Contractor must demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon prior to entering into this Agreement. Contractor must have or acquire a City business license prior to executing this Agreement.

Section 27. Use of Recycled Products. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

Section 28. Force Majeure. Neither City nor Contractor will be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of City or Contractor, respectively. Contractor shall; however, make all reasonable efforts to remove or eliminate such a cause of

delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

Section 29. Survival. All rights and obligations of the parties will cease upon termination or expiration of this Contract, except for the rights and obligations of a party for payment of completed Work, indemnity, dispute resolution, maintenance of insurance, and those provisions; including, but not limited to, provisions concerning property rights and governing laws which, by their nature, must survive termination to accomplish the intent of the parties as expressed in this Contract.

Section 30. Joint and Several Liability. In the event Contractor includes more than one person or entity, all such persons or entities will be jointly and severally liable for all conditions herein.

Section 31. Indemnification.

- A. General Indemnity.** Contractor must defend, save, hold harmless, and indemnify the City, its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Agreement.
- B. Control of Defense and Settlement.** Contractor will have control of the defense and settlement of any claim that is subject to this Section; however, neither Contractor nor any attorney engaged by Contractor will defend the claim in the name of the City, nor purport to act as legal representative of the City or any of its officers, employees, or agents without first receiving from the City, in a form and manner determined appropriate by the City, authority to act as legal counsel for the City, nor will Contractor settle any claim on behalf of the City without the approval of the City. The City may, at its election and expense, assume its own defense and settlement in the event that the City determines that the Contractor is prohibited from defending the City, or is not adequately defending the City's interests, or that an important governmental principle is at issue and the City desires to assume its own defense.

Section 32. Insurance. Contractor must provide City with evidence of the following insurance coverage's prior to execution of this Agreement. A copy of each insurance policy issued by a company currently licensed in the State of Oregon and certified as a true copy by an authorized representative of the issuing company or a certificate in a form satisfactory to City certifying to the issuance of such insurance must be furnished to City. Unless specifically set forth on Exhibit A, insurance and related costs must be borne by Contractor. All policies must be written on an "occurrence basis," except for Contractor's Professional Liability Insurance which may be written on a "claims made" basis, and maintained in full force for not less than three (3) years following Contractor's performance under this Agreement. All policies must provide for not less than 30 days' written notice to City before they may be revised, non-renewed, canceled, or coverage reduced. Excepting professional liability and worker's compensation coverage, all policies must provide an endorsement naming the City, its officers, employees, and agents as additional insureds. If the policy lapses during performance, City may treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Contractor to proceed with work; pay an insurance carrier (either Contractor's or a substitute) the premium amount and withhold the amount from payment to Contractor; and use any other remedy provided by this Agreement or by law.

- A. Automobile.** Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from the use of motor vehicles, including: on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- B. General Liability.** Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any act or omission of Contractor or of any of its employers, agents, or subcontractors, with \$2,000,000 per occurrence and in the aggregate.
- C. Professional Liability.** Professional Liability Insurance of \$2,000,000 per occurrence and in the aggregate, including contractual liability coverage. If Contractor proposes using subcontractors, City may require subcontractors to provide professional liability insurance, provided the amount and form of coverage complies with this Section.
- D. Policy Coverage.** Coverage provided by this policy(ies) must be primary and any other insurance carried by City is excess. Contractor will be responsible for any deductible amounts payable under all policies of insurance.
- E. Workers Compensation.** Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and must comply with ORS 656.017.

Section 33. Default; Remedies; Termination.

A. Default by Contractor. Contractor is in default under this Agreement if:

- (i) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- (ii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Agreement and Contractor has not obtained such license or certificate within fourteen (14) calendar days after City's notice or such longer period as City may specify in such notice; or
- (iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after City's notice, or such longer period as City may specify in such notice.

B. City's Remedies for Contractor's Default. In the event Contractor is in default, City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity; including, but not limited to:

- (i) Termination of this Agreement;
- (ii) Withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
- (iii) Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; and
- (iv) Exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default, then Contractor is entitled to the same remedies as if this Agreement was terminated.

C. Default by City. City is in default under this Agreement if:

- (i) City fails to pay Contractor any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
- (ii) City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

D. Contractor's Remedies for City's Default. In the event City terminates the Agreement, or in the event City is in default and whether or not Contractor elects to exercise its right to terminate the Agreement, Contractor's sole monetary remedy is (i) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Agreement but not yet billed, authorized expenses incurred and interest of two-thirds of one percent per month, but not more than eight percent per annum; and (ii) with respect to deliverable based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim(s) that City has against Contractor. In no event will City be liable to Contractor for any expenses related to termination of this Agreement or for any anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor must pay immediately any excess to City upon written demand provided.

E. Termination by City. At its sole discretion, City may terminate this Agreement:

- (i) For any reason upon thirty (30) days' prior written notice by City to Contractor;

- (ii) Immediately upon written notice if City fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient to pay for the Work or Work Products;
- (iii) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the City's purchase of the Work or Work Products under this Agreement is prohibited or City is prohibited from paying for such Work or Work Products from the planned funding source; or
- (iv) City may terminate this Agreement immediately upon written notice by City to Contractor if Contractor is in default of this Agreement.

F. Termination by Contractor. Contractor may terminate this Agreement with such written notice to City upon the occurrence of the following events:

- (i) City is in default because City fails to pay Contractor any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Contractor's notice of the failure to pay or such longer period as Contractor may specify in such notice; or
- (ii) City is in default because City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and City fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

G. Return of Property upon Termination. Upon termination of this Agreement for any reason whatsoever, Contractor must immediately deliver to City all of City's property (including, without limitation: any Work or Work Products for which City has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such City property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Contractor must immediately cease all activities under this Agreement, unless City expressly directs otherwise in such notice of termination. Upon City's request, Contractor must surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

H. City's Remedies Cumulative. In the event of termination, in addition to the remedies provided herein, City shall have any remedy available to it in law or equity. City shall also have such remedies as are available to it in law or equity for Contractor's breach without the requirement that City first terminate this Agreement.

Section 34. Dispute Resolution.

A. Process. If Contractor is not in agreement with a decision of the City under this Agreement, Contractor must comply with the following process:

- (i) Contractor must file a written notice of appeal with the City's Project Manager within fifteen (15) days following receipt of the City's written decision.
- (ii) The City's Project Manager will have sixty (60) days for review of the appeal prior to presenting a decision to Contractor. During the sixty (60) day period, the City's Project Manager will appoint a three-person management team as the authorized review panel. The review panel may call on the resources appropriate to evaluate the merit of the appeal. This may include, but not be limited to: City's attorney, Contractor, and any employee of City.
- (iii) Prior to the end of the sixty (60) day review period, the City's Project Manager will issue a written decision to Contractor. If Contractor is agreeable with this decision, a Change Order will be processed consistent with the decision.

B. Exhaustion of Remedies. If Contractor is not in agreement with the written decision of Public Works Director, Contractor will only then be entitled to initiate legal action as the prescribed administrative remedies have been exhausted.

C. Complaint. Any claim that cannot be resolved between the parties as set forth in this Section shall be initiated by filing a complaint in the appropriate court as provided in this Agreement. The claim and all cross and counter-claims filed in response to the complaint shall be submitted to mediation. If the parties cannot agree on a mediator, the Presiding Judge for Washington County will select the mediator. Only if the dispute cannot be resolved by mediation, will the parties proceed to litigate the claim in court.

Section 35. Attorney Fees. If any suit, action, arbitration or other proceeding is instituted upon this Agreement or to enforce any rights herein or otherwise pursue, defend or litigate issues related to this Agreement, each party will be liable for their own attorneys' fee and costs, including those on appeal. The parties each agree and hereby waive any right to attorney fees granted by statute or rule that conflicts with this provision.

Section 36. Execution of Agreement; Electronic Signature.

- A. This Agreement may be executed in one or more counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.
- B. A signature of a party provided by email, portable document format ("pdf"), or other electronic data file constitutes an original signature of that party.

Section 37. Governing Law; Venue; Consent to Jurisdiction. This Agreement is governed by and will be construed in accordance with the laws of the State of Oregon without regard to principles of law. Any claim, action, suit or proceeding (collectively, "Claim") between City and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Washington County for the State of Oregon, provided, however; if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event will this Section be construed as a waiver of any form of defense or immunity from any Claim or from the jurisdiction of any court. Contractor, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Section 38. Authority to Bind. City and Contractor each represent and warrant that the individual(s) executing this Agreement have taken all steps necessary to secure full authority to bind the City and Contractor, respectively, for the acts, expenditures, and obligations contemplated in this Agreement to be performed by each of them. BY EXECUTION OF THIS AGREEMENT, EACH PARTY HEREBY ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

AGREED AND ENTERED this ____ day of _____, 20____.

 (Contractor)

By _____
 Title _____
 Address _____

By _____
 [NAME OF CITY SIGNATORY]
 [TITLE]
 18880 SW Martinazzi Ave.
 Tualatin, Oregon 97062
 PHONE # _____

Telephone _____

 Contractor's Federal ID Number

APPROVED AS TO LEGAL FORM

 City Attorney

EXHIBIT A
CONTRACTOR'S SCOPE OF SERVICES